United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

Executed - Original

IN THE UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

NO. 74-2684

742684

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GILBERT FISHER,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO BRIEF OF APPELLANT

FRED L. WALLACE
200 West 135th Street Rm 218
New York, New York 10030
(212) 283-0600

Attorney for Appellant

UNITED STATES COURT OF APPEALS
FILED
FEB 28 1975
SECOND CIRCUIT

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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

GILBERT FISHER, : 74 Cr.
a/k/a Gilbert Fisher, Jr.,

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

FIRST COUNT

The Grand Jury charges:

On or about February 19, 1968, in the Southern District of New York, GILBERT FISHER, a/k/a Gilbert Fisher, Jr., the defendant, then a resident of New York, New York and elsewhere, who during the calendar year 1967 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1967 by preparing and causing to be prepared and filing and causing to be filed with the Internal Revenue Service a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their joint taxable income for the calendar year 1967 was $731.14 and that the amount of tax due and owing thereon was $102.36, whereas, as he then and there well knew, their joint taxable income for the calendar year 1967 was approximately $67,522.00, upon which taxable income there was owing to the United States of America an income tax of approximately $37,703.00.

(Title 26, United States Code, Section 7201.)

SECOND COUNT

The Grand Jury further charges:

On or about March 17, 1969, in the Southern District of New York, GILBERT FISHER, a/k/a Gilbert Fisher, Jr., the defendant, then a resident of New York, New York and elsewhere, who during the calendar year 1968 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1968 by preparing and causing to be prepared and filing and causing to be filed with the Internal Revenue Service a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their joint taxable income for the calendar year 1968 was $8,714.67 and that the amount of tax due and owing thereon was $1,540.01, whereas, as he then and there well knew, their joint taxable income for the calendar year 1968 was approximately $29,274.00, upon which taxable income there was owing to the United States of America an income tax of approximately $8,166.00.

(Title 26, United States Code, Section 7201.)

THIRD COUNT

The Grand Jury further charges:

On or about April 29, 1970, in the Southern District of New York, GILBERT FISHER, a/k/a Gilbert Fisher, Jr., the defendant, then a resident of New York, New York and elsewhere, who during the calendar year 1969 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1969 by preparing and causing to be prepared and filing and causing to be filed with the Internal Revenue Service

JSR:cmw
74-0737
N-512

a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their joint taxable income for the calendar year 1969 was $5,618.94 and that the amount of tax due and owing thereon was $1,110.36, whereas, as he then and there well knew, their joint taxable income for the calendar year 1969 was approximately $59,831.00, upon which taxable income there was owing to the United States of America an income tax of approximately $19,223.00.

(Title 26, United States Code, Section 7201.)

FOURTH COUNT

The Grand Jury further charges:

On or about February 22, 1971, in the Southern District of New York, GILBERT FISHER, a/k/a Gilbert Fisher, Jr., the defendant, then a resident of New York, New York and elsewhere, who during the calendar year 1970 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1970 by preparing and causing to be prepared and filing and causing to be filed with the Internal Revenue Service a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their joint taxable income for the calendar year 1970 was $725.52 and that the amount of tax due and owing thereon was $101.57, whereas, as he then and there well knew, their joint taxable income for the calendar year 1970 was approximately $63,962.00, upon which taxable income there was owing to the United States of America an income tax of approximately $25,009.00.

(Title 26, United States Code, Section 7201.)

FOREMAN

PAUL J. CURRAN
United States Attorney

Now the jury has resumed its deliberations. The original charge has full instructions on that issue.

MR. HERMAN: I respectfully except to the additional charge as given and do ask the Court at this time to recall the jury to state to the jury that --

THE COURT: No. The jury has been out about 15 minutes from the time I completed the answer to the question they put. I am not going to interrupt their deliberations now.

MR. HERMAN: Most respectfully except, your Honor.

THE COURT: Well, let's not argue. Your function was to state your position immediately when I instructed the jury. I didn't do it. Now that ends it.

MR. HERMAN: I respectfully except to your Honor's ruling in view of the time involved.

(Recess.)

(Jury entered the courtroom.)

(Time noted: 4:08 p.m.)

THE COURT: I have a note from the jury which states that they have diligently and conscientiously deliberated and attempted to reach a verdict and they feel that a verdict cannot be attained.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

I would be less than frank if I didn't say to you that the failure to reach a verdict in this case is disappointing.

I have a fixed policy of never commenting upon a jury verdict once it is reached one way or the other because the determination of the issues rests with the jury, but I do feel that comment is justified in this case.

In my view, the evidence was very substantial, and the issue was very simple, which would have permitted a verdict one way or the other, whichever way it went.

The Court would have no view or judgment as to your determination once you decided it.

We can't function under the jury system unless there is reasoning by the jurors and an adherence to their oath of office which is to view evidence objectively without regard to who the parties are and to reason the matter based on evidence in the case, and in accordance with the law.

And instead of reason, obstinacy, stubbornness, perverseness, or other factors come into play, then the jury system is really serving no purpose.

As I say, there are a number of cases where I very readily could understand disagreement, but in a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

case where the issues are simple, clean-cut, and the evidence substantial, it would seem to me that a reasoned approach would have permitted a verdict of guilty or not guilty in this case without question.

It simply means to me that extraneous factors entered into the jury's deliberations. All this adds up to is that both the government and the defendant will be put to the trouble and the expense and the travail, as far as individuals are concerned, of going to another trial, because the case will be set down for retrial and it will be tried before another jury.

Accordingly, I see no purpose in keeping this jury in further deliberation. I am satisfied, as I say, that at least as to some jurors, extraneous matters have entered into the jury deliberations.

Accordingly, the jury is discharged. The Court accepts the disagreement.

I am ready to hear suggestions from counsel to fix a new date for trial.

(Jury discharged.)

THE COURT: Mr. Rosenthal, you did mention an engagement for next week and Mr. Feinberg mentioned also that there is a problem with one of the witnesses.

MR. ROSENTHAL: Mr. Feinberg did.

THE COURT: Yes.

MR. ROSENTHAL: So the case that I had mentioned tothe Court is not disposed of but I have been advised by my client, who apparently is more on top of it than I am, that certain companion cases are going to precede his. I mean, they are individual indictments but they cover more or less the same subject matter.

THE COURT: Well, why don't I fix a date now for this? I will take into account your engagement, Rosenthal, and also take into account the problem that Mr. Feinberg has and fix the first Monday in November, November 4, for trial.

MR. ROSENTHAL: November 4?

THE COURT: Yes.

MR. ROSENTHAL: That should be good, Judge.

THE COURT: That will give you both ample time to get ready.

MR. ROSENTHAL: We will flex our muscles and what have you.

Where will you be sitting?

(Discussion off the record.)

THE CLERK: We are in Courtroom 2804 in November.

THE COURT: All right.

(Adjourned to November 4, 1974, 10:00 a.m.)

P. 07

Rosenthal and Herman

ATTORNEYS AT LAW

GILBERT S. ROSENTHAL
WILLIAM CHARLES HERMAN

JOEL BRENNER
IRVING SHAFRAN

401 BROADWAY
NEW YORK, N. Y. 10013
TELEPHONE (212) 226-7971

October 7, 1974

Honorable Edward Weinfeld
U.S. District Court Judge
U.S. Courthouse
Foley Square
New York, New York 10007

Re: U.S. V. Gilbert Fisher
74 Cr. 388 (EW)

Honorable Sir:

I have telephoned your chambers and spoken with Ms. Vollrath, advising her of the fact that Mr. Gilbert Fisher has discharged me as his attorney and is in the process of obtaining new counsel. Pursuant to Ms. Vollrath's request, I am making this statement in writing.

I was not discharged until late in the evening of Friday, October 4, 1974 at which time I advised the defendant that although I have, under the law, the right to exercise an Attorney's Lien in respect to the balance due for fee and disbursements made in his behalf, I am waiving same upon his promise to take care of them in the future and that upon receipt of a formal substitution of attorneys I am prepared to deliver to his new counsel all documents previously furnished me by the Government upon Discovery Proceedings plus defendant's exhibits and the "thirty-five hundred material" delivered to me by A.U.S.A. Feinberg.

Respectfully yours,

ROSENTHAL & HERMAN, P.C.

By: Gilbert S. Rosenthal
GILBERT S. ROSENTHAL

CSR:ls
cc. A.U.S.A. Feinberg
cc. Gilbert Fisher

ONLY COPY AVAILABLE

Rosenthal and Herman, P.C.

ATTORNEYS AT LAW

GILBERT S. ROSENTHAL
WILLIAM CHARLES HERMAN

JOEL BRENNER
IRVING SHAFRAN

401 BROADWAY
NEW YORK, N. Y. 10013
TELEPHONE (212) 226-7071

Rm 1001

October 9, 1974

COPY

Mr. Gilbert Fisher, Jr.
446 North Woodland Street
Englewood, New Jersey

RE: U.S. v. Gilbert Fisher, Jr.
74 Cr. 388 (MP)

Dear Mr. Fisher:

Enclosed is a copy of the letter dated October 9, 1974 which I this day received from Judge Weinfeld, and the contents of which I have read on the telephone this morning to your wife Eunice.

Trusting that you will be guided by the direction of Judge Weinfeld, I am awaiting word from you or your attorney. I remain

Sincerely yours,

ROSENTHAL & HERMAN P.C.

By: Gilbert S. Rosenthal
GILBERT S. ROSENTHAL

GSR:ml
Enclosure

cc: Honorable Edward Weinfeld

cc: A.U.S.A. Kenneth Feinberg

cc: c/o Miss Eunice Variety

09

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE EDWARD WEINFELD

October 9, 1974

MEMORANDUM TO: GILBERT S. ROSENTHAL, ESQ.
AUSA KENNETH FEINBERG

Re: United States v Gilbert Fisher
74 Cr. 388

With respect to the communication addressed to the Court by Gilbert S. Rosenthal, the attorney representing the defendant, the Court directs the attorney to advise the defendant that while it is his absolute right to substitute attorneys, this cannot serve as an excuse to postpone the trial presently scheduled for November 4, 1974. There is ample time to obtain a new attorney, and the Court directs that all parties be ready for the retrial of this case on November 4.

EDWARD WEINFELD
UNITED STATES DISTRICT JUDGE

A 10

FRED L. WALLACE
COUNSELLOR AT LAW
200 WEST 135TH STREET
NEW YORK, N. Y. 10030
283-0600

October 15, 1974

Mr. Kenneth Feinberg, Esq.
Asst. United States Attorney
Southern District of New York
United States Court House
Foley Square
New York, N.Y. 10007

Re: U.S. v. Gilbert Fisher
74 Cr. 388

Dear Mr. Feinberg:

I have been retained by Gilbert Fisher, Jr., the above-noted defendant, and have been asked by him to substitute for Mr. Gilbert Rosenthal, Esq. as the Attorney of Record in the noted case. Pursuant to the letter that I have this day sent to Mr. Rosenthal, a copy of which is enclosed, there should be to you within the next several days an official Consent to and Notice of Substitution in relation to this change of attorneys.

I understand from Mr. Fisher that this case is quite voluminous, involving over a hundred detailed exhibits and over a week of testimony. I understand also that the trial resulted in a hung jury.

I expect by tomorrow to have received the file on the case from Mr. Rosenthal and, by Thursday, October 17, 1974, to have completed my initial review.

Because of the hung jury, I assume that there must have been some difficulty with the Government's case. As of this point in time, I do not know what that difficulty most likely was. I expect, however, by Thursday to have a better idea. To my understanding, it is the general policy of the U.S. Attorney's Office, the I.R.S., and the revenue statutes to effectuate a compromise in cases of this type. As I understand it from Mr. Fisher, he is and has been always willing to pay to the government whatever it is held or negotiated to be due and owing. As I understand, it was his attitude during the years involved in the indictment to pay whatever was owed and that he did not have any intention to evade taxation. In any event, and given what I view as the clear interest of all involved, an attempt should be made to resolve this prosecution by the statutorily authorized mechanics of compromise-over which your office has entire control. Judge Weinfeld, given the mem-

orandum of his that I have received, appears to me to be quite anxious to have this case finally and quickly disposed of. I assume that he would support an effort to, at least, attempt to reach compromise on this case which has already occupied so much of his court's time.

Accordingly, I would greatly appreciate an opportunity to meet with you on Friday, October 18, 1974 or at your earliest convenience thereafter to discuss what can and should be done in this matter and whether it can be compromised. I will have my assistant, Ms. Simmons, contact your office on Thursday to see whether or not we can confirm a date.

Sincerely yours,

Fred Wallace

FLW/fw
cc: Hon. Edward Weinfeld
Encl.

FRED L. WALLACE
COUNSELLOR AT LAW
200 WEST 135TH STREET
NEW YORK, N. Y. 10030
283-0600

October 15, 1974

Hon. Edward Weinfeld
Judge of the United States District Court
Southern District of New York
United States Court House
Foley Square
New York, N.Y. 10007

Re: U.S. v. Gilbert Fisher
74 Cr. 388

Honorable Sir:

I am in receipt of a Memorandum under date of October 9, 1974 addressed by you to Gilbert Rosenthal, Esq. and Mr. Kenneth Feinberg, Esq. in reference to the above-noted case. As the enclosed copies of letters indicate, I am in the process of being substituted as Attorney of Record for Mr. Rosenthal and in the behalf of Mr. Fisher, the defendant.

I have taken your memorandum of October 9, 1974, basically as a directive to me and I am writing this note for the purpose of assuring you that I intend no unnecessary or dilatory actions in reference to the defense of this case.

As I understand it from Mr. Fisher, he became somewhat uneasy during the trial of his case. After the jury hung on disposition of a verdict, he became even more upset since it was his opinion that there was no real case against him. Apparently, in the week or so after the termination of the first trial, friends of Mr. Fisher convinced him that there were certain privileges that Mr. Fisher had which, if asserted, would have prevented his wife and his attorney from ever having testified against him. I believe that this was the matter that led to Mr. Fisher's decision to terminate the services of Mr. Rosenthal and not any intention on his part to substitute at this point to delay the onset of his new trial. Indeed, I must admit that I am somewhat puzzled by the Government's having made or having been allowed to make a case against Mr. Fisher out of the testimony of persons with whom he was entitled to enjoy a confidential and privileged relation. However, as I have told Mr. Fisher, there is undoubtedly a perfectly valid explanation on the face of the entire record and that Mr. Rosenthal, as an attorney of high repute, undoubtedly gave him a very adequate defense. Though perhaps it should not be that way, per-

sons in Mr. Fisher's predicament are wont to lose confidence in their defenders for no good reason. But however good or bad the reason, loss of confidence does dictate an immediate change in attorneys, even if the smooth time flow of the case is interrupted.

I understand your concern that the case be resumed for trial on schedule and on November 4, 1974. I will offer you my personal assurance, that, and if it is humanly possible to do so, I will make every effort to be prepared to go forward to trial on that date. However, I must say that, and should my review of this case,once the materials are available to me, indicate that I can meet the November 4, 1974 date only by lessening. the quality of the defense that could be mounted for Mr. Fisher or by waiving objections and rights that I, in good conscience,believe he has a right to assert, I will respectfully request of your Honor a delay.

Given the schedule that I anticipate in the enclosed letters, I should know by the beginning of next week how much time will be necessary for me to familiarize myself comfortably with this case and how much research has to be done on the apparent issues of law that are involved. Should I come to the conclusion at that time that a delay is necessary, I will make immediate application to you.

Hoping that my review of the Record will indicate that we can proceed to trial upon the schedule set, I am

Sincerely yours,

Fred Wallace

FLW/fw
cc: Mr. Kenneth Feinberg, Esq.
Encl.

BY HAND DELIVERY

FRED L. WALLACE
COUNSELLOR AT LAW
200 WEST 135TH STREET
NEW YORK, N. Y. 10030
283-0600

October 15, 1974

Mr. Gilbert S. Rosenthal, Esq.
Rosenthal and Herman
Attorneys at Law
401 Broadway
New York, N.Y. 10013

Re: U.S. v. Gilbert Fisher
74 Cr. 388

Dear Mr. Rosenthal:

I have been retained by Gilbert Fisher, Jr., the above-noted defendant, and have been asked by him to substitute for you as the Attorney of Record in the noted case. I am in receipt of your letter of October 7, 1974, to Mr. Fisher in which you acknowledge your willingness to consent to a substitution. Pursuant to that expression, you will find enclosed a formal Consent to Change of Attorneys that I have prepared and which has been signed by Mr. Fisher and acknowledged by him. I have enclosed three copies of the Consent. I would appreciate your signing them and returning two to my office along with the file that your office has on the case. In order to expedite matters, I will have my associate, Mr. Albert Morgan, contact you and arrange to pick up the file from your office in person.

I am also in receipt of a copy of a letter under date of October 9, 1974, from you to Mr. Fisher and to which is attached a Memorandum from Judge Weinfeld to you which is also under date of October 9, 1974. As I understand it, Judge Weinfeld has placed you under order to deliver certain instructions to Mr. Fisher and, constructively, to me. The receipt of those instructions through you is acknowledged in the behalf of Mr. Fisher and in my behalf. I acknowledge receipt of those instructions only. I do not indicate any agreement or disagreement with the directive of Judge Weinfeld at this time. Until such time as I have had an opportunity to review the file on this case which is now in your possession, I know of no sensible way that I can estimate the amount of work that I have to do and the time that it will take in order to arrange for Mr. Fisher the quality defense that I certainly believe he has a constitutional right to expect and demand.

I would greatly appreciate the opportunity and permission to

call upon you during the next several weeks while I am reviewing this case and preparing it for trial. Your knowledge and familiarity with the history of the case would be of invaluable assistance to me and would certainly speed the necessary process of review and preparation.

Thanking you for your anticipated cooperation in this regard, I am

Sincerely yours,

Fred Wallace

FLW/fw
cc: Hon. Edward Weinfeld
Mr. Kenneth Feinberg
Encl.

GILBERT S. ROSENTHAL
ATTORNEY AT LAW
401 BROADWAY
NEW YORK, N. Y. 10013

CANAL 6-7971

October 17, 1974

Fred L. Wallace, Esq.
200 West 135th Street
New York, New York 10030

Re: U.S. v. Gilbert Fisher, Jr.
73 Cr. 388 (E. W.)

Dear Mr. Wallace:

Pursuant to telephone conversation had with you late afternoon of yesterday, October 16, 1974, I hand you herewith the various Government Exhibits introduced into evidence which I have a copy and which are enumerated on the separate receipt, a copy of which is being furnished to you at this time. You will note that there are several blank spaces in the listing of the Government Exhibits. The reasons for this is twofold, namely that I do not have copies of these exhibits and I am unable to furnish a description of same because I have not had in my possession the Trial Transcript since September 19, 1974, when it was delivered to your client, Gilbert Fisher, Jr., and his wife, Bernice Fisher.

I am also delivering to you at this time all the various Discovery Material Items noted on separate receipt, which items were not offered in evidence by the Government upon the Trial.

Likewise, I am delivering to you at this time the balance of the Transcript of the Trial, pages 845 through 903 plus a copy of the Indictment and various other miscellaneous papers and documents which are listed on the receipt designated as Receipt No. 3.

Although I was prepared to deliver to you the "3500 Material" given to me by A.U.S.A. Feinberg immediately prior to and during the recent Trial, Mr. Feinberg has withdrawn his consent previously given to me and directed me not to turn same over to you until I receive further instructions from him. Since it is my understanding that the Office of the United States Attorney has the right to determine when defense counsel may receive "3500 Material" prior to Trial, reluctantly I am complying with his instructions.

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In addition to all of the foregoing, I am delivering to you the Defendant's Exhibits enumerated on the separate receipt designated by that title. In respect to the blank spaces, lacking a description, it may be due to the fact that the particular Exhibit was a document belonging to the Government and returned to them after the Mistrial. Again, not having the transcript, I am unable to set forth a proper or complete description of the particular Items.

I note in your letter hand delivered to me at 10:40 this morning, you mention the fact that you may desire to call upon me while you are "reviewing this case and preparing it for trial". Because of the vituperative attack make upon me by Mr. Fisher, I find myself extremely reluctant to become involved in the Retrial of this indictment.

As you no doubt know, there is a balance of fee due me plus a substantial amount for disbursements and monies expended in behalf of Mr. Fisher, and I would appreciate your using your good offices to see that these are paid in the not too distant future.

Wishing you and your client success on the Retrial, I remain,

Sincerely yours,

GILBERT S. ROSENTHAL

GSR:ls
Encls.

cc. Hon. Edward Weinfeld, U.S.D.J.
A.U.S.A. Kenneth Feinberg, Esq.
Mr. Gilbert Fisher, Jr.

RECEIVED THE FOLLOWING FROM GILBERT S. ROSENTHAL, 401 BROADWAY, NEW YORK, N.Y., FORMER ATTORNEY FOR GILBERT FISHER, JR., IN CONNECTION WITH THE CASE OF U.S. v. GILBERT FISHER, JR., 74 CR. 388 (E.W)

Exhibits marked into evidence will be designated "G" for Government, "D" for Defendant, those only received for identification will be designated as "Gi" or "Di" - items received on discovery and not marked into evidence will be designated by "It" immediately preceding the number originally assigned by the Government.

Dated: New York, New York

October , 1974.

Attorney for Gilbert Fisher, Jr.

G 1 1967 Joint return.

G 2 1968 Joint return.

G 3 1969 Joint return.

G 4 1970 Joint return.

G 5 1970 Single return of Rosalie.

G 6 1970 Single return of Gilbert Fisher.

G 7 1967 tax return Esplanade Garage, Inc.

G 8 1969 tax return Esplanade Garage, Inc.

G 9 1969 tac return Esplanade Garage, Inc.

G 9A F.I.C.A. quarterly returns of Esplanade Garage, Inc.

G 10 Contract of sale, bill of sale, etc. Re: purchase of 511 West 142nd Street, 10/15/65.

G 11 Carver mortgage, etc. Re: premises 636 West 158th Street.

G 12, 62 and 62A Bond, satisfaction of mortgage, checks, I.R.S. interview and I.R.S. schedules Re: Greenidge mortgage premises 636 West 158th Street.

G 13

G 14 and G 15 Signature card and passbook New York Bank for Savings.

G 16 and G 17 Signature card and bank book acc. #6987 Chase Manhattan Bank.

G 18

G 19 and G 20 Bank statements and deposit slips Chase Manhattan Acc. #55984.

G 21 Signature cards Freedom National Bank Acc. #5410

G 22 Bank statements Freedom National Acc. #5410

G 23

G 24 Personal records Re: Freedom National Bank Acc. #5410

G 25 Signature card and transcript of account N.Y. Bank for Savings Acc. #2380.

G 26 Signature card and transcript of account N.Y. Bank for Savings Acc. #3013.

G 27 Carver Federal S. & L. transcript of account numbers 74226 and 94868.

G 28 Social Security records - Rosalie.

G 29 and G 29A Documents Re: Snype loan

G 30, G30A and G 31 lease, payment card, power of attorney Re: Box No. 287 Manufacturers Hanover Trust Co. ???

G 32

G 33 Car invoice 4/7/66.

G 34 Loan note New York Bank for Savings.

G 35 Car invoice 1967

G 36 Car invoice of 3/20/69

G 37 Seven checks to Department of Motor Vehicles.

G 38 and G 38A Seven checks V.A. and I.R.S. report, etc.

G 39 Agreement and checks H. & H. Associates

G 40 and G 40A Checks and letters Re: Metropolitan Life policy.

G 41 and G 41A Checks and records Re: Metro. Life policy.

G 42 Letter and check Re: Louis Rowe Enterprises.

G 43 Four checks and I.R.S. schedule Re: Home Reader Service.

G 44 Checks Re: Better Home and Gardens.

G 45 Letter Re: Leather Craft

G 46 and G 46A Checks and documents Re: Sears Roebuck & Co.

G 47 Checks Re: Criminal Court, etc.

G 48 Three checks Re: furs.

G 49 See XXX

G 50 Checks Re: N.Y. Telephone Co.

XXX Assorted checks of Rosalie including Exhibit Nos. 43, 44, 45, 46, 49, 51, 52 and 64.

G 51 See XXX

G 52 See XXX

G 53 Checks and I.R.S. schedule Re: charitable contributions.

G 54 Letter from Father Maguire Re: contributions to church.

G 55, G 56 and G 56A Leases and renewals checks and letter Re: 2190 Madison Avenue.

G 57, G 58 and G 58A Parking lease checks, etc.

G 59 and G 59A Letter and checks Re: Parking (Axelrod).

It 60 and It 60A Various documents, etc., Re: mortgage payments 511 West 142nd Street

G 60, G 60A, and G 61

G 62 and G 62A See G 12

G 63 and G 63A letter and check Re: safe deposit box #287

G 64 See item XXX

It 65 Re: N.Y. State returns - joint for 1967, 1968 and 1969, separate for Rosalie 1970 and 1971

G 66 Checks Re: State tax

It 66A Letter Re: State tax

G 67 Checks Re: New York City tax

G 68 Complete transcript of Nevada divorce proceeding, redacted portion of Nevada divorce proceeding admitted into evidence.

G 69 Nevada divorce decree and exemplification.

It 69A Paternity petitions

G 70 and G 73 Checks to John Singleton

G 71 F.I.C.A. (941) reports Re: Bernice's

G 72 N.Y. State sales tax reports, records Re: Bernice's

G 73 See G 70

G 74 Teller's checks, N.Y. Bank for Savings

G 75 Signature card and transcript Lulu Fisher Banker's Trust

G 76 Contract of sale Sherman to Gross Re: Englewood property

G 77 Assignment by Gross Re: Englewood property

G 78 and G 78A

G 79 Check to Nussman Re: Englewood property

G 80

G 81 Check to Nussman Re: Englewood property

G 82 Check to Nussman Re: Englewood property

G 83

G 84 Deed to Gilbert Fisher, Jr. as Trustee.

G 85

G 86

G 87

G 88 Contract for construction of Englewood property

G 89

G 90

G 91A, G 91 B I.T.S. receipt for $16,000. from contractor, Police escort slip and various City permits.

G 92

G 93

G 94

G 95

G 96, G 96A and G 97 Contract, etc., Re: pool

G 98 and G 99 Invoices and ledger card of Buena Decorators

G 100 and G 101 P.S.E. & G. Re: Gas and electric - Englewood

G 102 DeMeglio bill

G 102A Real estate taxes, City of Englewood

G 103 Expand-a-home

G 104 Marlin Pool

G 105 New Jersey Bell Telephone bills, etc.

G 106 Car invoice of 5/20/68

G 107 Believe this refers to purchase of Jaguar on or about 10/17/69

G 108 Car invoice 10/31/68

G 109 Car Invoice 6/9/70

G 110 Car invoice of 12/31/69

G 111 Certificate of incorporation of Bernice's Novelty, Inc.

G 112 Agreement Re: "gates" for Bernice's

G 113 Statement of Belmont Greeting Card Re: Bernice's

G 114 Statement of A.R. - E.X. Hosiery Re: Bernice's

G 115 Victor Comptometer Corp. Re: Bernice's

G 116 Kosmit Sales Re: Bernice's

G 117 Paul Lederman Re: Bernice's

G 118 Regent Sign Co. Re: Bernice's

G 119 Sun Hosiery Re: Bernice's

G 120 Summit Products Re: Bernice's

G 121 Rent schedule Re: Bernice's

G 122 Letter Randolph Re: Bernice's

G 123 through G 127 Bills and letters re: medical treatments Drs. Klein, Levberg, Moore, Warner and West.

G 128 Community Council Cost of Living, etc.

G 129, G 129A, 129B, 129C, 129D, 129E, and 129F Re: Lenox Terrace lease etc., Apt. 11 K, 470 Lenox Avenue

G 130 and G 131 Statements of The Modern School and Viergie's Tot Town Nursery School

G 132 and G 133 Invoices Cordix Travel Bureau

G 134 Letter Public Service and receipt for return of cash collateral

G 135 Statement Re: camp for Fisher boys

G 136 and G 139 Application for Medicade by Gilbert Fisher, Sr. and Lulu Fisher and hospital bills Lulu Fisher

It A Summary of taxable income and liability

LIST OF GOVERNMENT'S PROPOSED EXHIBITS.

DISCOVERY MATERIAL RECEIVED FROM OFFICE OF U.S. ATTORNEY AND NOT OFFERED IN EVIDENCE

It 1	B.C.I. rap sheet of defendant
It 6	1965 joint return of defendant and Rosalie
It 7	1966 joint return of defendant and Rosalie
It 10	Contract of Sale and Closing Statement Re: purchase of 471 West 159th Street
It 146	F.I.C.A. reports for 1971 for Gilbert Fisher D.B.A. "Bernice's"
It 150	Bill of sale and other documents Re: purchase of Jaguar 10/13/71.

Received the above from Gilbert S. Rosenthal, 401 Broadway, New York, N.Y., former attorney for Gilbert Fisher, Jr., in connection with the case of U.S. v. Gilbert Fisher, Jr., 74 Cr. 303 (EW)

Attorney for Gilbert Fisher, Jr.

RECEIPT NUMBER 3

RECEIVED THE FOLLOWING FROM GILBERT S. ROSENTHAL, 401 BROADWAY, NEW YORK, N.Y., FORMER ATTORNEY FOR GILBERT FISHER, JR., IN CONNECTION WITH THE CASE OF U.S. v. GILBERT FISHER, JR., 74 CR. (EW)

PAGES 845 THROUGH 903 OF TRANSCRIPT OF TRIAL OF U.S. v. GILBERT FISHER, JR., 74 CR. 388 (EW).

BALANCE OF TRANSCRIPT PAGES 1 THROUGH 844 PREVIOUSLY DELIVERED TO CLIENT ON SEPTEMBER 19, 1974,

LETTER FROM ATTORNEY IN CHARLESTON, SOUTH CAROLINA RE: REAL PROPERTY OF ANNA SNYPE (DECEASED). (ORIGINAL LETTER OF SEPTEMBER 10th WAS ABOARD EASTERN AIRLINE PLANE THAT CRASHED).

COPY OF INDICTMENT

AFFIDAVIT OF MRS. SOVEYA ANTONIA FOX DE JOE, DATED SEPTEMBER 20, 1974. PLUS CASSETTE OF INTERVIEW.

MISCELLANEOUS PAPERS OF DEFENDANT, GILBERT FISHER, JR.

MISCELLANEOUS PAPERS OF STATEMENTS, ETC. FURNISHED BY JOHN L. SINGLETON PURSUANT TO SUBPOENA.

Attorney for Gilbert Fisher, Jr.

DEFENDANT'S EXHIBITS IN U.S. v. GILBERT FISHER, JR. 74CR388 (EW)

THOSE NOT ADMITTED INTO EVIDENCE ARE IDENTIFIED BY DI

D-A Letter of Gilbert Fisher, Sr., 7/28/67, from Dack&Nussman

D-B

DI-C Internal Revenue Service notice to defendant

D-D Letter of 2/24/71, Stanley Thomas to Rosalie Fisher

DI-E Letter of 3/12/71, Stanley Thomas to Rosalie Fisher

D-F Letter of 3/24/71, Kenneth Bruce to Stanley Thomas

D-G " " 4/16/71, " " " " "

DI-H Summons of Complaint, Gilbert Fisher v. Rosalie Fisher

D-I Stipulation of Discontinuance

DI-J Copy of General Release

DI-K Letter Manufacturers Hanover re safe deposit box 287, 9/4/74

DI-L " " " " " " " ", 9/5/74

D -M

D-N Probate papers re estate of Lewis Snype

D-O Bill of Doctor Purnell

D-P Bill of Doctor Patrick

D-Q Bill of Doctor Day

D-R " " " "

D-S

D -T

D-U Bill of Doctor Calfon

D-V Certificate of doing business under assumed name

DI-W FBI Rap Sheet of defendant

D-X Letter of Stanley Thomas of 3/12/71 to Rosalie Fisher plus certified mail receipt.

Received the above from Gilbert S. Rosenthal, 401 Broadway, New York, N.Y. former attorney for Gilbert Fisher, Jr., in connection with the case of U.S. v. Gilbert Fisher, Jr., 74 Cr. 388 (EW).

Attorney for Gilbert Fisher, Jr.

4159 of

3500 MATERIAL RECEIVED IN U.S. v. GILBERT FISHER 74CR308 (EW)

3501 Grand Jury testimony of S.A. Boltja on 4/5/74

3502 " " " " " " " 4/4/74

3503 " " " " " " " 4/10/74

3504 Grand Jury testimony of Rosalie Fisher on 4/4/74

3505 Report of S.A. Bruh. Interview of Rosalie Fisher on 10/2/72, 10/4/72.

3506 Report of S.A. Buckley and S.A. Boltja. Interview of Rosalie Fisher 5/4/73.

3507 Correspondence with Meredith Corp.

3508 Memo of report of R.A. Spadola re V.A. Insurance

3509 Report of S.A. Boltja re Doctor Purnell, 2/23/73

3510 Letter of Doctor Patrick, 2/22/73

3511 Bills of Doctor Day, 2/26/72

3512 Bills of Doctor Cairon, 4/15/73

3513 Letter of Doctor Jones, 12/7/72

3514 Report of S.A. Boltja re Doctor Wareham, 2/23/73

3515

3516 Bills of Doctor Freidman, 10/5/72

3517 Bills of Doctor Hoenig, 5/3/73

3518 Report of S.A. Boltja re N.Y.U. Dental College, 2/23/73

3519 Report of S.A. Boltja re Mary Bernice Frazier, 4/11/73

3520 Report of S.A. Boltja re Charlotte Jones, 4/17/73

3521 Report of S.A. Boltja re Betty Ann Williams, 4/12/73

3522 Report by R.A. Spadola re John Singleton, 1/19/73

3523 Report by R.A. Spadola and S.A. Boltja re John Singleton, 2/ /73

3524 Report of S.A. Boltja re John Singleton, 4/20/73

3525 " " " " " " " 5/23/73

3526 Report of S.A. Boltja, N.Y. Bank for Savings, 5/23/73

3527

3528	
3529	
3530	
3531	
3532	
3533	Report of R.A. Spadola re Eugene Mentis, 6/21/72
3534	Report of S.A. Boltja. Interview with Leonard Reynolds, 4/17/73
3535	Report of R.A. Spadola. Interview with Robert Baena, 5/25/72.
3536	
3537	
3538	Report of R.A. Spadola re Defeo Cadillac, Inc., 9/11/72
3539	Report of S.A. Boltja re Phyllis Leigh, 3/1/73
3540	Report of S.A. Boltja re Sergio Palanque, 5/1/73
3541	Grand Jury testimony of R.A. Spadola, 4/4/74
3542	
3543	
3544	Grand Jury exhibit 11B
No number	Grand Jury exhibit 10B
No number	Letter etc., of Doctor Ollivierre, 12/26/72

Received the above from Gilbert S. Rosenthal, 401 Broadway, New York, N.Y., former attorney for Gilbert Fisher, Jr., in connection with the case of U.S. v. Gilbert Fisher, Jr., 74CR308(CH

Attorney for Gilbert Fisher, Jr.

JKd

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-versus- 74 Crim. 388

GILBERT FISHER, JR.,

Defendant.

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New York, N.Y.
October 21, 1974

Before:

Hon. EDWARD WEINFELD,

District Judge.

Appearances:

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
KENNETH R. FEINBERG, Esq.,
Assistant U. S. Attorney

FRED WALLACE, Esq.,
GILBERT ROSENTHAL, Esq.
Attorneys for Defendant

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THE CLERK: Add to the calendar United States of America against Gilbert Fisher, Jr. Mr. Feinberg is the Assistant and requests that this matter be called and added to the calendar.

MR. FEINBERG: Your Honor, this morning I met privately with Mr. Wallace, who is Mr. Fisher's new attorney. As long as Mr. Wallace was in the building, he had certain questions about timing. This trial being scheduled for November 4th, Mr. Wallace would now ask to be heard before the Court.

THE COURT: Well, I saw Mr. Rosenthal here. Where is Mr. Rosenthal. I haven't released him, you know. You had better get him in here.

MR. WALLACE: I think, your Honor, that things are not quite --

THE COURT: Wait until he gets here.

MR. FEINBERG: Your Honor, I just caught Mr. Rosenthal. He is on the phone. He will be right in.

(Recess.)

#1A (Case called again.)

MR. WALLACE: Your Honor, I would have preferred to have an in chambers discussion in relation to this, if I could. Being that I did not expect to be addressing the Court this morning, we thought it might serve, convenience-

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wise, to have this little chat with you.

THE COURT: I am prepared to hear it now.

Where is Mr. Rosnethal?

MR. FEINBERG: He is here.

THE COURT: Mr. Rosnethal, I am told an application is being made in the Gilbert Fisher case, and I think it was understood by all that under our rules an attorney is not released until there is a formal substitution.

MR. ROSENTHAL: I understand that.

THE COURT: Approved by the Court.

MR. ROSENTHAL: But I have already received a consent.

THE COURT: I understand that. I saw a copy, but that is subject to the Court's approval, because there are rules of the Court on this.

Now, go ahead.

MR. WALLACE: That certainly is the case. I have obtained from Mr. Rosenthal a consent to substitution. The formal request of substitution I have not yet submitted. As a matter of fact, Mr. Feinberg and myself were simply having our initial discussion this morning.

I have not entered any of the motions that I thought might be necessary.

The question of whether or not I will be ready

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to go to trial as of the 4th of November, as directed by your Honor, came up. Mr. Feinberg suggested that it might be well to have a discussion with you. I did not plan, certainly, to make any formal application. I have not the motions prepared yet. I have only read the transcript fully for the first time over this weekend. I have not read the exhibits yet.

The consent of substitution will be an attachment to the formal motion to substitute, which you will be receiving. I expect to have that done tonight.

This was supposed to have been an opportunity for us perhaps to get some feel as to timing and/or other motions.

THE COURT: What is your name?

MR. WALLACE: My name is Fred Wallace.

THE COURT: I should know it. I have had letters from you. I made it perfectly clear in my memorandum that my calendar is set up on a very tight schedule. I was prepared when the jury returned in disagreement to put the case down, as a matter of fact, within three or four days thereafter, and I think it was at Mr. Rosenthal's urging, because he had some other matter in the state court, that I put it over to November 4th.

MR. ROSENTHAL: I think Mr. Feinberg also had

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some other commitment.

THE COURT: And I indicated that that was a substantial period of time, that the case had been set down for following the jury disagreement.

When I received the notice that Mr. Fisher desired to have other counsel, which I say is his right, but it doesn't encompass a right to postpone a case, it occurred to me it was almost a month from the date I fixed the trial, and I did not want any delay, and I was giving ample notice that a month's time, in terms of my experience and my particular experience with this case, is more than ample for full preparation, and I am prepared to say to you now that even as of today, if a lawyer came in fresh without knowing anything about this case, there is ample time to go ahead on November 4th.

Now, my calendar is tight. It is back to back. I have carved out the time for this trial, and the case will go ahead that morning. There is nothing extraordinary about the case.

MR. WALLACE: Your Honor, if I might respond, I do not agree with your Honor in that there is nothing extraordinary about this case.

THE COURT: Well, it wouldn't be the first time that a lawyer disagreed with me, but I have sat through the

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case. It is a perfectly simple case.

MR. WALLACE: Well, your Honor, my reading of the transcript -- I have not analyzed the exhibits yet, at all -- indicates to me that there are a number of very substantial issues which I think should be well researched before Mr. Fisher is put through the defense of his freedom. Certainly a calendar is of importance, but obviously from my position I have a client whose best interests I must protect.

I was not involved in this case before a week ago, as of which time I immediately began efforts to see whether or not we could meet your Honor's deadline.

Frankly, the final decision as to whether I can reach that deadline or not I have not yet made. I had indicated in those letters that I intend to talk to Mr. Feinberg first. Mr. Rosenthal analyzed the case to see whether or not there were issues that would require an extension of time. There are some issues. Whether they will require an extention of time or not I will not know until I have contacted another counsel I intend to associate with the case, to see what his view is of the timeliness of the problem, but your Honor's directive was received by me.

As I indicated, I responded immediately because of the, let's say, appearance, at least, of some word on your part that dilatory tactics might be an issue, might

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pose some substantial issue, and certainly that was not Mr. Fisher's circumstance in the case. Upon reading it fully, it disturbs me, frankly, as much, apparently, as it disturbs him, and I intend certainly to have this case fully explored.

Now, if that does involve a request for more time, as I promised your Honor in the letters that I addressed to you under date of October 15th, I will make a motion for the extension.

If your Honor sees fit to deny it, then certainly I will simply take the extension that will be my right to do so.

THE COURT: All right, you have made your statement, and I indicated the Court's position. If you are going to consult with other, additional counsel in this matter about some points, this case was fully probed, and I am repeating, it is a perfectly simple case. You had more than a month from the time you were first consulted by Mr. Fisher.

MR. FEINBERG: Just one point. Mr. Wallace has told me, has mentioned to me that there is a substantial possibility that he himself will not try the case. Now, if that is the case, with the trial expected just two weeks from today, the government is at a loss as to who will try the case.

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MR. WALLACE: The responsibility will be mine, Mr. Feinberg. It comes down to a matter that if we are forced to go to trial on the 4th and if before that time I have taken the position -- I will do that by motion -- that we could not possibly be prepared, I say again we will go to trial, we will honor your Honor's directive.

On the other hand, as far as my having been contacted, I understand that on the 4th of October Mr. Rosenthal was discharged, but I was not contacted until the following week.

Now, as of that time, I then began my activities, which was about five or six days ago.

So again, it's like the matter of your Honor's views is your Honor's view.

Thank you, your Honor. I think we have taken care of as much as we can today.

MR. ROSENTHAL: Am I relieved? I can't possibly represent this man.

THE COURT: Not yet. You may have to sit by.

MR. ROSENTHAL: What, sir?

THE COURT: You may have to sit by. I am going to tell you -- I am not forecasting the result -- if for any reason I order this case to go forward on November 4th, as I have already ordered it to go forward, if there is a last-

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minute attempt by counsel to withdraw, I am going to suggest that your client be prepared, that the Court will consider a revocation of bail.

MR. WALLACE: Your Honor, your advice is well taken. Thank you very much.

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UNITED STATES OF AMERICA

vs 74 Crim. 388

GILBERT FISHER, JR.

October 25, 1974

Appearances:

PAUL J. CURRAN, Esq.,
United States Attorney for the
Southern District of New York
By: KENNETH FEINBERG, Esq.,
Assistant U. S. Attorney

FRED WALLACE, Esq.
Attorney for Defendant

Also Present:

PAUL PERITO, Esq.
Perito, Rose & Duerk.

* * * * *

THE CLERK: The next matter, your Honor, United States of America against Gilbert Fisher, also known as Gilbert Fisher, Jr.

MR. PERITO: Good afternoon, your Honor. My name is Paul Perito, your Honor. I was contacted by a classmate of mine, Mr. Fred Wallace.

THE COURT: State your name for the record.

MR. PERITO: My name is Paul L. Perito, Perito, Rose & Duerk, 1001 Connecticut Avenue, N.W., Washington, D.C.

Your Honor, I was contacted on Monday. I fortuitously ran into my law school classmate while I was

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here on another matter, seeing the United States Attorney, and he asked me if I would be prepared to engage myself in a matter pending before your Honor which was scheduled for trial November 4th.

I was on my way to Boston on another professional matter, arranged subsequently to pick up the record, which I have very briefly reviewed, and met last night, came in from Washington and met last night for the first time with the defendant, Mr. Fisher.

Mr. Fisher and Mr. Wallace wanted to retain me to represent them and to work with Mr. Wallace in this case. I am anxious to get involved in the case.

I spoke to the Assistant United States Attorney today, but I have a problem in that next week I have a matter before Judge Neher that was put off from this week, which is scheduled to go at least three days, and the following week, your Honor, I have depositions in a civil case where people are coming in from out of the country and we are under very strict rule to complete discovery by the end of November from Judge Bryan in the Eastern District in Alexandria, Virginia, and the name of that case is Omega U. S. Limited versus Lanning, and Lanning Corporation.

Your Honor, looking at the complexity of the case, there are 150 exhibits and being able to give him my best

judgment whether we move forward, whether I recommend some disposition, I would ask your Honor for three weeks, and if I could have three weeks, your Honor, we could start this the last week in November.

I could be prepared by that time. It might well be that that time might allow me to make some recommendation to Mr. Fisher, and a trial might not be necessary. I don't know that at this point.

I know one thing, having been an Assistant in this office, in the office of the United States Attorney for four and a half years, I know how your Honor likes to try cases, and I know in a case such as this, especially where there could be a long documentary chain, I would be anxious to do what Mr. Rosenthal did. However, before I could agree to the stipulation of authenticity on all these documents, I would have to spend some time in Mr. Feinberg's office.

I cannot adequately prepare for the case if we go forward on November 4th, and I would not file a notice of appearance.

But what I would ask your Honor is, if your Honor would give me three weeks, it would give me an opportunity to prepare, talk to the United States Attorney, and spend some time with my clients.

MR. FEINBERG: Your Honor, we are ready, of

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course, November 4th, pursuant to your instructions.

THE COURT: Mr. Perito, Mr. Wallace was in previously on this matter and he came in after I had received word that the defendant desired to change his attorneys. I wrote to him, this is his absolute right, but the right doesn't include the right to delay a trial.

I am not unmindful of the problems that lawyers have, but we have other problems in moving cases in this Court.

The fact of the matter is that when the jury disagreed, it was on, I don't know, the night of September 19th or when it was I took the disagreement. In any event, it was on September 19th; I was ready to put this case down for immediate trial, retrial the following Monday.

Mr. Rosenthal then indicated that while he was ready to try the case again as far as the trial was concerned, he had other commitments and asked me that it go over, and I accommodated him. I put the case over and that matter went over for six weeks.

Now in the meantime I have filled in my calendar and this morning I had a call calendar where cases were set for trial and I can't, consistent with the commitments of the Court, other cases, both civil and criminal, that are pressing for trial, grant any further adjournment in this

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matter.

I can't permit to go by one statement that you made, that Mr. Wallace made the other day, too, that this is a complex case. There may be 150 exhibits, if that is what you refer to. From where I sit, in terms of my experience, this is a very simple case for trial. The issues are very sharp-cut. They are clearly defined, and I don't see it in terms of a complex case in any respect.

It is true there are a great number of exhibits in the case. That does not mean it is a complex case at all. It is a very simple case, and I am aware of your anxiety to get into the case.

I think the Court's commitments are such that I have to adhere to the date, and if your motion is to postpone the case, the motion is denied.

MR. PERITO: Would your Honor consider referring it to another judge because of your Honor's calendar?

THE COURT: I am not going to burden another judge with a case that belongs to me. If you gentlemen can agree and get another -- I have no objection to it, but I am certainly not going to ask another judge to take a case which is assigned to me.

I think, actually, Mr. Perito you should know I carry my own workload.

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MR. PERITO: I know that, your Honor.

THE COURT: And I don't ask another judge to take a case that belongs to me. That is my responsibility.

MR. WALLACE: If the Court please, in terms of the effective motion that we have made for reassignment, I would like you to consider the case of United States versus Simon, 393 F.2d --

THE COURT: I am so familiar with that case, and I must tell you, with the greatest respect to the Court of Appeals, I think that case was decided on a misunderstanding of the factual situation in this court.

The truth is that Ipersonally, as well as other judges, repeatedly have set cases down for retrial where there were disagreements before the Court, and I have never-- and I have said this directly to the Court of Appeals judges-- ever agreed that the factual basis of that ruling in the Simon case is sound, and the fact of the matter is there was a subsequent case written where some doubt was case as to the basis upon which the Simon case was decided.

I think it is a perfectly easy matter for a judge to retry the case himself. He knows the case, and there is less work on another judge.

The fact of the matter is, it is easier for me to send this to another judge, but I feel it is my responsibility.

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MR. WALLACE: Your Honor, in light of Simon, the defendant --

THE COURT: I tell you, if you think Simon is good law -- maybe it is still in the Court of Appeals -- you are perfectly free to walk out of this courtroom and go upstairs to the Court of Appeals and attempt to mandamus me. I have no objection. I won't take any personal affront at it.

I am suggesting to you, if you think the Simon case supports your position, you go right out of this courtroom and it won't take very long, apply for a writ of mandamus or writ of prohibition to stop me from trying the case.

MR. WALLACE: In terms of the record, your Honor, I must indicate that the defense's failure to agree with the retrial before your Honor on the second trial --

THE COURT: What?

MR. WALLACE: I must indicate to you the disagreement of the defendant to try this case before you on the second trial; I think that is a requirement of the Simon case.

THE COURT: If he feels that way and you are representing him, I mean, there is nothing to stop you from going to the Court of Appeals.

MR. WALLACE: All right, your Honor. Thank you

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very much.

THE COURT: And you have my present position, that I am prepared to try the case, that I have carved out the time to try the case. My other commitments do not permit the adjournment, despite the very forceful application made by Mr. Perito, and you can be heard, I am sure, Tuesday morning, if you get your order to show cause out in time. I have no objection. I won't take personal affront. I go beyond that. I have no objection. You feel your client doesn't want to be tried before me, why, there are enough other judges that he may be very happy with. You go upstairs. I won't take any affront in the slightest degree.

MR. WALLACE: I appreciate your Honor not taking any affront.

THE COURT: I don't. You go right outside now and get up your petition. Go to the Court of Appeals.

MR. WALLACE: All right, your Honor, thank you very much.

MR. FEINBERG: Your Honor, I am going to plan on contacting Mr. Rosenthal and tell him to be present in court on November 4th.

THE COURT: No, no, Mr. Wallace is representing him now. I understood that.

MR. FEINBERG: Does your Honor -- Mr. Rosenthal

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has not been relieved as yet, however. Should Mr. Rosenthal be present?

THE COURT: I'm assuming that, pending the application to the Court of Appeals, if the petition should be dismissed the case is going forward on that date.

MR. WALLACE: Yes.

THE COURT: Is that correct?

MR. WALLACE: That is correct.

THE COURT: All right. Then I will relieve Mr. Rosenthal on the representation made by Mr. Wallace.

MR. PERITO: Thank you, your Honor.

THE COURT: Get together with Mr. Wallace. If you think the Simon case is authority for his position and his client is unhappy before me, I won't take any offense at all. You go right upstairs and do what you can.

MR. WALLACE: Thank you, your Honor.

* * * * *

A true copy,
A. Daniel Fusaro
Clerk
By Vincent A Carbone
Chief Deputy Clerk

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

NO. 74 Cr. 388

UNITED STATES OF AMERICA,

Plaintiff,

v.

GILBERT FISHER,

Defendant.

MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT TO SUPPRESS TESTIMONY BY THE WIFE OF DEFENDANT

FRED L. WALLACE
200 West 135th Street
Room 218
New York, New York 10030
(212) 283-0600

Attorney for Defendant

MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT TO SUPPRESS TESTIMONY BY THE WIFE OF DEFENDANT

GILBERT FISHER, the defendant herein, by FRED WALLACE, his attorney respectfully submits the following points and authorities in support of his Motion To Suppress The Testimony of Defendant's wife Rosalie Fisher.

Statement on the Case

Defendant was indicted on April 11, 1974, on four separate counts alleging the evasion of income taxes for the years 1967, 1968, 1969, and 1970, respectively, in contravention of 26 U.S.C. § 7201. Defendant was brought to trial on the indictments on September 9, 1974. The trial ended with the jury unable to reach a verdict on September 19, 1974. New trial was established by the Court to commence on November 4, 1974.

Statement on the Facts of the Motion

The transcript of the former trial of Defendant is 903 pages in length. Nearly half of the transcript details the testimony of Rosalie Fisher, who was called and compelled by the Government to testify against the Defendant as the chief witness for the prosecution. Rosalie Fisher was the wife of the

Defendant during the entire years 1967, 1968, 1969, and 1970, the years covered in the indictment.

In 1973, Defendant sued Rosalie Fisher for a divorce in the Courts of the State of Nevada. In July or August 1973, trial on the petition of Defendant was held and subsequent thereto, the trial court ruled with Defendant and entered its determination that the divorce should be granted. Subsequently, Rosalie Fisher appealed the decision of the trial court to the Nevada Supreme Court, alleging as one grounds of appeal that the trial court lacked any jurisdiction to grant a divorce because of the asserted failure of Defendant to establish proper residency in the State of Nevada. The Supreme Court of the State of Nevada has assumed jurisdiction of the case and appeal of Rosalie Fisher and has set the case down for argument in October, 1975. No decision finalizing or overturning the divorce will be made until sometime after October 1975.

In the opinion of divorce counsel for Defendant, Mr. Tony Terry of the firm of Cohen and Terry, 229 North 3rd Street, Las Vegas, Nevada, (702) 384-6484), there is no final divorce between the

Defendant and Rosalie Fisher until some time after October, 1975; and Defendant and Rosalie Fisher are and remain husband and wife and legally wed.

Defendant was not advised of this circumstance nor did he understand this to be the case until late Sunday night, November 3, 1974 when he was so counselled by his attorney Mr. Wallace who, by telephone, had conferred with Defendant's divorce attorney, Mr. Terry, that night.

It is the belief of Defendant that the Government intends on the second trial of Defendant, scheduled to commence on November 4, 1974, to again use Rosalie Fisher as the chief prosecution witness against Defendant and to make extensive references in its opening remarks to the jury of what the testimony of Rosalie Fisher will show when she assumes the witness chair. Such remarks will be highly prejudicial to the cause of Defendant.

Defendant intends to assert and does hereby note and assert the privilege and right accorded him by the common law; by the law of the United States; and by the law of this jurisdiction not to be confronted by the testimony of his spouse against

him and as basis therefor directs the attention of the Court to the following points and authorities of law:

Points and Authorities

The question at issue is that of spousal competency to act as witness in a criminal trial. Defendant applies to the Court for a declaration of the incompetency of Rosalie Fisher to act in any way against him, including the recitation of testimony to be given by her against him by the Government attorneys.

Rule 26 of the Federal Rules of Criminal Procedure States in relevant part:

> In all trials the testimony of witnesses shall be taken orally in open court.... The....competency and privileges of witnesses shall be governed....by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

In the case of McCray v. Illinois, 386 U.S. 300, the Supreme Court of the United States asserted primary non-adjudicatory supervisory jurisdiction in relation to the delineation, meaning and limits of the foregoing rule.

This Court, therefore, has the ultimate

task of defining the scope to be accorded to the various common law evidentiary privileges in the trial of federal criminal cases. 386 U.S. 300, 386

The Supreme Court dealt dispositively with the issue of spousal incompetency in the case of Hawkins v. United States of America, 358 U.S. 74. (See discussion in that case) Pursuant to Hawkins the classic common law rule on the right of a criminal defendant to disqualify his spouse as a witness against him remains for the federal courts untouched by order of the Supreme Court within its supervisory capacity under Rule 26 of the Federal Rules of Criminal Procedures. The Hawkins rule is recognized in the Second Circuit and should be applied in the instant case. United States v. Mackiewicz 401 F 2d. 219

WHEREFORE Defendant respectfully prays that this Court will enter an order suppressing and barring any testimony by Rosalie Fisher against him; forbidding Rosalie Fisher from being called and compelled to act as a witness for the Government; and forbidding the prosecutors for the Government from making any statement, allusion, or other reference to any testimony that Rosalie Fisher has given or would give against the Defendant. Defendant prays that the

Court will grant such other relief to effectuate the privilege of Defendant as shall appear necessary and just in the premises.

Fred Wallace

Fred L. Wallace
Attorney for Defendant
200 West 135th Street
Room 218
New York, New York 10030
(212) 283-0600

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of November, 1974 I served one copy of the within MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT TO SUPPRESS TESTIMONY BY THE WIFE OF DEFENDANT upon the following person by hand delivering a true copy of same to him or his clerk.

Kenneth Feinberg, Esq.
Asst. United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

Fred W. Williams
Attorney for Defendant

Copy Received
Kenneth R. Feinberg
Nov. 4, 1974

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
vs.	74 Cr. 388 (EW)
GILBERT FISHER, a/k/a GILBERT FISHER, JR.,	
Defendant.	

Before:

HON. EDWARD WEINFELD,

District Judge.

New York, November 4, 1974;
10.00 o'clock a.m.
(Room 905)

APPEARANCES:

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York;
BY: KENNETH R. FEINBERG, Esq.,
Assistant United States Attorney.

FRED L. WALLACE, Esq.,
Attorney for Defendant;
BY: GARY NAFTALIS, Esq., of Counsel.

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(Case called.)

MR. NAFTALIS: Your Honor, with the Court's permission, would it be possible for me to take up a few legal matters before we start?

THE COURT: Go ahead.

MR. NAFTALIS: Your Honor, I will be trying this case on behalf of Mr. Fisher. I contacted your Honor's chambers last Wednesday when I was first contacted by Paul Perito, an old friend of mine from the U. S. Attorney's office who asked me if I would be able to take this case.

The initial application I would like to make is one for a very brief continuance. I know your Honor has had applications for a continuance before on other occasions which were lengthy and I am not sure they are entirely based on the grounds I would like to put before your Honor now.

Basically, these are on three separate grounds.

The first of which is, I was first contacted on this case by Mr. Perito on Wednesday and wasn't really retained in the case until Wednesday and in actuality, it wasn't until Friday of last week that I was able to do any work on the case. I have worked Friday, Saturday and yesterday on preparing this case and have been able to read the transcript of the trial and I was also able to talk to Mr. Fisher yesterday. In addition, Mr. Feinberg has been

very courteous and gracious and gave me the 3500 material which I have looked at.

However, while Mr. Feinberg courteously made available down at the Court House here the availability for me to inspect the Government's exhibits in this case which I understand are reasonably voluminous, I haven't had a chance simply because of lack of time and I think Mr. Feinberg will confirm that, and, so, your Honor, I would ask for a very brief continuance onthat ground as well as on two other grounds.

The second ground, your Honor, is really an offshoot of the first. There are a lot of exhibits in the case. I have read the transcript. I haven't looked at the exhibits and I am not really sure after I sit down and look at them there really would be much problem as to stipulating as to most of the exhibits in the case. Indeed as I mentioned to Mr. Feinberg, the reading of the testimony of some of the witnesses who Mr. Feinberg will call, it may well be that even those witnesses we could stipulate to and we might end up having a shorter trial than last time.

The problem about going ahead this morning, is that I am not in a position, really, except for something like the tax returns which there really isn't any problem about, you don't need a custodian from the Internal Revenue

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Service. I am not able to stipulate as to the authenticity of some of the exhibits and we will just be sitting here and I will be looking at documents and I may be stipulating to them or all of them but I will not stipulate to anything --

THE COURT: There is a stipulation on file in this case. It was entered into on the prior trial and that stipulation is binding. A shift of lawyers doesn't change the fact of the stipulation.

MR. NAFTALIS: Your Honor, I have never seen the stipulation, but I would respectfully submit, and I am not trying to be obstreperous because your Honor knows me.

THE COURT: Mr. Naftalis, did you call my chambers on Wednesday and state to my secretary that you would be ready to try this case on Monday provided the Court did not sit on Tuesday, Election Day as the Court had planned?

MR. NAFTALIS: Your Honor, what I said to your secretary was this:

I had been contacted by Mr. Perito and before I could be retained in this case, I would have to be assured that the Court would not sit on Tuesday although it was a legal holiday because I had to try another case before Judge Fuld sitting as an Arbitrator tomorrow. If the Court was sitting tomorrow, I couldn't even take the case.

Your Honor's secretary said to me "Are you going

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to be prepared to go ahead on Monday," and I said a continuance motion has just been denied so I guess I don't have much choice. That was the substance of my conversation with your Honor's secretary.

The purpose of the call, your Honor, as I relayed to your secretary was, I didn't think it was fair or appropriate for me to come into this case and then assuming we started today and you had an intention of sitting on Tuesday just to spring upon you the fact I had a conflicting engagement then put myself and you and Judge Fuld in this kind of a ridiculous position who gets to try a case tomorrow and I thought as a matter of courtesy and fairness I should inform your Honor because if your Honor were sitting tomorrow, I would have to tell Mr. Perito I would have to tell him I couldn't take the case.

THE COURT: Based on your conversation with my secretary as reported to me, word was sent back I would not, in deference to your request, sit on Tuesday. You were told that, were you not?

MR. NAFTALIS: Yes, your Honor.

THE COURT: What is your next point?

MR. NAFTALIS: The main point I am making on the second point, your Honor, I know your Honor has the same problem that every judge of the Court House has, you have

severe scheduling problems and what I am really saying on the second point is, and maybe in an inarticulate way, if I were able to sit down with Mr. Feinberg prior to the trial like today and go over the documents and the case, we might end up saving an awful lot of in-court time and I think Mr. Feinberg would agree to that. I think he understands that if the question were posed to Mr. Feinberg.

We are in a position now where I just haven't had a chance to look at the exhibits that are going to be offered in evidence and I don't propose to say I am going to be objecting necessarily to something or not objecting necessarily to something. If something is non-controverted, what can I do about it, but on the other hand, I don't think in fairness that I can just sit there and let 100 or 200 or whatever exhibits there are go in without reading them and discussing them and deciding with my client whether they are accurate or not. There may be a particular part of an exhibit which may or may not be relevant.

The third thing, your Honor, which I would respectfully raise as a possible ground for a very short continuance, and the continuance I am talking about is something like to Thursday, to give us two days, would be, your Honor, on Saturday on the telephone I had some discussions with Mr. Feinberg about a possible disposition of the case,

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and I make no representation there will be any disposition in this case by any stretch of the imagination.

Mr. Feinberg and I have had frank back and forth discussions as to different views of what would be acceptable to my client, what would be acceptable to the Government and there was in no sense any agreement. However, I did request of Mr. Feinberg the opportunity to discuss with Mr. Edwards and Mr. Mollo, something that I had in mind and he said that would be all right.

I am not saying that would work and Mr. Feinberg is not in favor of that particular solution for the case. There isn't time to do that and that is also something we would accomplish if we had two more days.

I won't mislead the Court and I don't intend to say there would be a plea of guilty to anything necessarily if we start the trial --

THE COURT: I wouldn't spend time on that. The defendant is entitled to put the Government to its proof and go to trial as you have heard me say repeatedly to defendants. There is no necessity for the defendant to give up his constitutional rights to a jury trial so don't spend time on that. If the parties desire to work out accommodations, that is between them and the prosecution and the the Court has no interest in it.

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MR. NAFTALIS: I know your Honor has no interest in it. The only point I was making is that simply if we had a little more breathing time, it is something we could explore and possibly if our discussions are fruitful, and I make no representations they will be, it will obviate the need for a trial and will have more saving of court time and if we start the case, there will just be no chance of discussions.

THE COURT: There will be a chance for discussions at the end of the court day and the start of the court day if anybody has any purpose in discussing anything.

Mr. Naftalis, you have left out one important item in your statement and that is, Mr. Wallace who sat at the conference table with you, would be co-counsel and participated in the trial and has been in the matter some five or six weeks.

Your motion is denied. The case will proceed at trial.

MR. NAFTALIS: Might I take up some legal matters which relate to the trial of the case?

THE COURT: Yes.

MR. NAFTALIS: Might I make one last alternative suggestion, if your Honor please, on the question of the trial.

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Would your Honor consider the possibility of picking a jury today and then putting over to Wednesday the opening statements and the taking of proof? I have certain legal matters I want to bring up --

THE COURT: Mr. Naftalis, I must say that in the desire to avoid any delay of this trial because of other commitments, I yielded rather reluctantly to the request not to sit tomorrow. I had planned to sit tomorrow and a full day tomorrow. There are other cases that have been scheduled for trial which present a problem. I think you must be aware of the fact that only I contemplated trying this case within three or four days after the jury returned its disagreement. However, I accommodated Mr. Rosenthal and apparently also Mr. Feinberg it seems in some respect but Mr. Rosenthal represented that he had a State Court commitment. I recognized it and I put the matter over I think about seven weeks. The case is going forward in terms of the problem that is presented with respect to other matters pending in this court. It should go forward just as much as this case should go forward. Let's not spend any other time on it.

MR. NAFTALIS: Your Honor, I contacted Mr. Feinberg I guess it was on Friday and made some requests of him and I want to put those requests on the record.

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Your Honor, I would like to move under Brady against Maryland for production of certain matters. Particularly, I am concerned with getting all or parts of the following documents which relate to matters which I submit may possibly be exculpatory or helpful to the defendant:

The special agent's report, the memo from Regional counsel of the Internal Revenue Service; Regional counsel's report to the Department of Justice; the Department of Justice report forwarding the case and I believe that these reports may well contain information which would be exculpatory, including but not limited to the following; information relating to any gambling activities of Gilbert Fisher prior to th year 1967 and my reading of the transcript seems to indicate that the Government went on to the assumption that every dollar he made during the period -- every nickel he spent during the period 1967 through 1970 more or less was attributable to unreported gambling earnings during that period.

I would submit there is evidence in this record and evidence available that indicates he was a gambler as far back as 1960 and I think if there is any evidence of any investigations or information about those activities or c omments about that, that may well be exculpatory and

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may well provide an explanation for the source of some of the moneys Mr. Fisher spent during the period 1967 through 1970.

In addition, your Honor, I would be interested in any other information in any of those reports; they usually talk about possible defenses or weaknesses in the case or problems.

THE COURT: How would that be exculpatory if somebody else has a theory of defendant's defense?

MR. NAFTALIS: One thing which you would consider in a case like this, if the man is a gambler, obviously any offers that he received from gambling activities had he made disclosures and so on would be deductible against his earnings. I want to know whether or not they made any inquiries about that and what they show and what they didn't show.

This is a case which is an expenditures case which is a hybrid of net worth. They are required to follow all leads.

THE COURT: That is assuming leads were furnished by the defendant.

MR. NAFTALIS: Your Honor --

THE COURT: Let's move along. This is getting to be a free-wheeling kind of a setup and, again, with

counsel in the case, this is a motion that should have been made long before this. The motion wasn't made. I will ask the Government if the Government has turned over all Brady material?

MR. FEINBERG: We have, your Honor. This is the first I have heard of it but I will check again'

THE COURT: Go ahead.

MR. NAFTALIS: The last statement in connection with Brady material, is any indications in there about Rosalie Fisher because she wasn't prosecuted.

MR. FEINBERG: There are none.

MR. NAFTALIS: Title 18, Section 3504, I would like to make an application relating to the possible existence of unlawful or lawful wiretaps in this case.

As your Honor knows, the defendant's principal occupation was as a gambler. Your Honor, on information and belief, actually more than information and belief, the activities of gamblers have been the most prone to wiretap activities both on the Federal and State levels and I don't restrict myself to the Federal level. I am concerned about the State level.

From my conversations with Mr. Feinberg and my invesitgations in the case, I have the impression that initially the case started not simply as a routine audit,

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but because the Internal Revenue Service had received certain derogatory information relating to Mr. Fisher and began, I think, part of a special project. That is what Mr. Feinberg told me. If that is so, if this didn't evolve out of a routine audit procedure, I would think the possibility -- and he wasn't singled out because they thought he was a nice guy -- that the possibilities of illegal electronics surveillance is present in this case and on information and belief, I would ask the Government to affirm or deny any electronic surveillance done by the State or Federal Government in the case.

MR. FEINBERG: Your Honor, this was raised before and there is none.

MR. NAFTALIS: With the State level too?

MR. FEINBERG: That is correct.

MR. NAFTALIS: Your Honor, the last two items don't have to be raised now but I do believe they ought to be raised before the opening statements. I have certain motions addressed to the question of whether the competency of Mrs. Rosalie Fisher to testify against her husband Gilbert Fisher relating to the husband-wife privilege --

Your Honor, I know you are holding the jury, but I would respectfully ask to be heard on those prior to the opening statements because if our positions are correct,

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Mr. Feinberg ought not to refer to them during the opening.

THE COURT: You may be heard now.

MR. NAFTALIS: Your Honor, I think the principal witness against Mr. Fisher at the first trial was Rosalie Fisher. Indeed, other than that and some testimony in Las Vegas which I have an application about, there was no other evidence of any kind that this gentleman was involved as a gambler at all. There was certainly no direct evidence in the sense that people testified that on such and such a date I paid Gilbert Fisher $50 for betting the numbers.

Your Honor, Mr. Wallace did a memorandum.

THE COURT: I saw it as I walked in the courtroom this morning.

MR. NAFTALIS: In one matter he points out something which I didn't know about until this morning that Mr. Wallace learned last night which is on page 2 of the memorandum, that the force decree apparently unbeknownst to Mr. Fisher may not be final. Mrs. Fisher, Rosalie Fisher is appealing -- I will just be reading, I don't know anything more than what is in there on page 2 and carrying over to page 3. These facts are facts that Mr. Wallace is personally familiar with and if your Honor wanted to question him about it, you can.

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THE COURT: I certainly have no desire to question him about the opinion of a divorce counsel given to him over the telephone.

Let's go on with it, please.

MR. NAFTALIS: Your Honor, I set forth the facts of the cases on appeal and Mrs. Fisher is attempting to throw out the divorce, so in any event, your Honor, I haven't researched the law, I haven't had an opportunity to look at the law because this is something I learned about three minutes to ten this morning when I came into the courtroom, but it seems to me, your Honor, there is authority based on the Hawkins case in the Supreme Court that would indicate if people are still married, the spouse privilege is a much stronger privilege than if they are divorced and might hold her generally incompetent to be a witness.

Even going beyond that, your Honor, and I talked to Mr. Feinberg on the phone and he cited to me a case Mackiewicz which he relied on in making a prior argument here. If seems to me, your Honor, some of the testimony of Rosalie Fisher whether she is divorced or not divorced goes to the very heart of the kind of confidentiality that the husband-wife privilege was designed to protect. Considerations between Rosalie Fisher and Gilbert Fisher on such and such a day when he gives her a bag of money to

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take to the bank or here, take this, this comes from the numbers, seems to me those are not the kinds of things which were said in front of third parties or anything else. Those were the kinds of things said during the course of the marriage and the course of the degree of confidentiality and even under the Mackiewicz case, the Arby case, the Perrera case, I don't think a wife ought to be allowed to testify against her husband under those circumstances.

It seems to me that those are precisely the kinds of confidentiality matters that the husband-wife privilege is all about.

Mr. Feinberg will say he went into the Las Vegas divorce proceeding and admitted he was a gambler and therefore there was a waiver. I am not sure that follows at all for a couple of reasons.

One, that was obviously not a public announcement that was made to the world at large.

Secondly, in talking to Mr. Fisher last night, it was his understanding that the divorce proceeding in Nevada was not going to be a matter of public record to be desseminated but something kept within the parties and, thirdly, it has been my understanding that matters in the Divorce Court, that the husband and wife privilege does not

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apply in the same way in a divorce action between the parties.

In any event, your Honor, it seems to me Rosalie Fisher's testimony whether she is still lawfully married to him or isn't lawfully married to him any more is a violation of the husband-wife privilege. Certainly as to certain of those key conversations if not much broader parts of her testimony and I would ask that her testimony be excluded, at least as to those parts if not more.

MR. FEINBERG: Your Honor, two answers. Of course we have the decree of divorce here and the question of the fact that Mrs. Fisher might not be divorced flies in the face of the documentary proof that the Government will offer at trial in the form of the decree of divorce and transcript.

Also, your Honor, as to this confidentiality argument, the simple answer to that is, none of the testimony of Rosalie Fisher is the type of testimony that the marital privilege is designed to deal with. The documentary evidence concerning the bank deposits and the testimony of Rosalie Fisher about gambling, that all has been published. The test is not whether the world at large knows. The test is whether the parties have transposed that information to third parties and the best evidence in this case

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is the transcript where Mr. Fisher by his own admission publishes the information concerning the gambling and that is the simple answer.

MR. NAFTALIS: May I be heard on that?

THE COURT: Don't extend it, Mr. Naftalis. I have given you full opportunity. Let's get going in this matter. Let's not get into any debate.

Make your argument and conclude it and be brief and to the point.

MR. NAFTALIS: Your Honor, I just don't think that Mr. Feinberg's statement that this was stuff for the world at large is accurate. Considerations which are the most definite stating if Rosalie testifies to a rather confidential conversation when he hands her some money and says this is from numbers and takes it to the bank, he didn't testify to that in Las Vegas. All he said in Las Vegas was that he was a gambler and he did well.

Second of all, it was in a divorce proceeding where he was present, his wife was present and their attorneys were present, not in Yankee Stadium. It seems to me quite a big different than some big public proceeding and it wasn't a Chicago 7 trial in which he made those statements.

THE COURT: The motion is denied on two grounds.

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One, basically the Court is satisfied that no privilege existed with respect to the communications referred to and, two, even if it did, it was waived in various respects including a waiver upon the trial, the first trial and also in a pretrial conference.

The motion is denied. The case will proceed to trial.

Call the jury.

(A jury was duly impaneled and sworn.)

(Two alternate jurors were sworn.)

THE COURT: Mr. Feinberg, you may make your opening statement.

MR. FEINBERG: If it please the Court, Mr. Naftalis, Mr. Wallace, ladies and gentlemen of the jury:

This case involves income tax evasion, the deliberate, wilful decision of this defendant, Mr. Fisher, to cheat the United States out of a substantial amount of tax which he owed to the United States.

My name is Kenneth Feinberg, and with me is Bill Bolger, a representative of the Internal Revenue Service.

It will be our job to present the case to you.

There are four charges in this case, four different crimes. It is alleged that this defendant evaded income tax for the years 1967, 1968, 1969 and 1970, four different years.

During these years, the Government's proof will show that the defendant was a gambler here in New York City.

To use his own words, that he was one of the best gamblers in the area; that he was in the numbers or policy business, and that when the defendant files his returns for these four years, he substantially understated his income by

failing to mention the vast sums of money that he had made primarily through this gambling operation.

The case is really that simple.

The Government's proof will show that the defendant made expenditures, that is, that in these four years, the defendant spent $215,000 that he never reported as income.

The Government's proof will show that this defendant bought automobiles, four or five, Jaguars, Cadillacs, never reported this money on his income tax returns.

The Government's proof will show that this defendant built a $50,000 home in Englewood, New Jersey with money that was never reported to the Internal Revenue Service; that he had money in various banks never reported to the Internal Revenue Service, and where did he get this money?

The proof will show that it came primarily from this defendant's gambling activity.

Thus, the indictment, the charges in this case, will show that in the four years involved in this case, the defendant Mr. Fisher reported in his income tax returns income of $15,800, approximately. He reported that $15,800.

His actual income for these four years, $215,000 -- $215,800.

The proof will show that Mr. Fisher paid a tax in

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these four years totalling approximately $2900.

The proof will show that he should have paid in these four years $87,250.

What we have here, ladies and gentlemen, is a blatant understatement of taxable income and the payment of tax.

Now, how will the Government prove its case for this is the purpose of the opening; to give you a capsule idea of how we will go about this case.

The Government will go about proving the income by what is called the expenditures method. What this means is, the Government will show that the defendant spent money that was never reported, approximately $215,000 spent, that wasn't reported.

Now, it is absolutely crucial at the outset to point out that this defendant made almost all of his expenditure through other people. The Government's proof will show that the defendant gave money to other people to spend for him so that it would not be found out, or, when the defendant did spend money, it was always cash, under the table, so to speak, so there would be no records.

The Government's proof is really divided into two areas. There are two different categories of people that spent money for this defendant, that spent the defendant's

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money.

From 1967 through 1970, the first category is the defendant's former wife, Rosalie Fisher.

She will testify at this trial that from 1967 through 1970, she spent large sums of money provided her by Mr. Fisher; that not only did she pay her own bills with the money that Mr. Fisher gave her, but she paid all of Mr. Fisher's bills as well, is VA insurance, his life insurance.

These were bills paid for by Mrs. Fisher with money that Mr. Fisher gave her.

Mrs. Fisher will testify how her former husband was in the gambling business; how envelopes filled with money would be presented toher and to Mr. Fisher, gambling money.

Mrs. Fisher will testify that much of this gambling money was in large bulk, change, nickels, dollars, quarters, that Mrs. Fisher put this money in a shopping basket and wheeled it to the bank because it was too heavy for her to carry.

Mrs. Fisher will testify that all of this money was placed in bank accounts and was never reported on the income tax returns; that all the expenses of Mr. Fisher and Mrs. Fisher were paid for by check which Mrs. Fisher wrote

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out and we will offer these checks in evidence at this trial.

This is only a small part of the case, for around 1967, Mr. Fisher becomes separated from his wife, becomes separated and begins to support another woman and two children, Mr.Fisehr's children, now living with another woman, a Bernice Duncan, also known as Bernice Fisher.

The trial will show beginning in 1967, not only was Mr. Fisher spending money through his former wife Rosalie, but he also began to spend money through Bernice Duncan and the two children,living not in New York, but in New Jersey, in Englewood.

The result is, ladies and gentlemen, we have the second major source of expenditure by Mr. Fisher. These are expenditures made in New Jersey for Bernice Duncan and the two children, and the most obvious sort of expenditure which will be shown at this trial is the fact that Mr. Fisher in 1968 and 1967, built a home in New Jersey.

None of that money used to finance thathome is reported.

Thus in 1967, a new home is constructed. The cost is in excess of $50,000 to build.

The evidence will show that although the house is in the name of Mr. Fisher's parents, this is a subterfuge;

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that it is Mr. Fisher that finances the construction of this home; that it is Mr. Fisher thatpays for the swimming pool in the back yard; that it is Mr. Fisher that sends his two children to private school.

None of these funds to finance all of these different operations is ever reported by Mr. Fisher on his income tax returns.

You will hear testimony from this witness stand that the contractor and the lawyer who worked together to build this home for Mr.Fisher received money from Mr. Fisher, cash, in brown paper bags.

On one occasion the evidence will show that Mr. Fisher actually comes to the site where the house is going up, walks over to the contractor and says to him, "Here is my payment for the house," and gives him $16,000 cash in a brown paper bag, money that is never reported to the Internal Revenue Service.

The evidence will show during all of this time that Mr. Fisher's parents are actually on medical assistance, welfare assistance, here in the City of New York.

During this time in New Jersey, Mr. Fisher buys Bernice Duncan a 1970 Jaguar, buys himself a Cadillac, money that is never reported to the Internal Revenue Service.

On one occasion, ladies and gentlemen, the

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Government's proof will show that Bernice Duncan signs the invoice for a brand new Jaguar, is made out to Bernice Duncan, with the money, the receipt is made out in Mr. Fisher's signature.

Thus you will see that the Government's proof is really two separate aspects of this case.

The first is Rosalie Fisher spending money that Mr. Fisher earned as a gambler that was never reported.

The second, altogether separate as respects this case, is with Rosalie Fisher out of the picture, Mr. Fisher continues to spend more than ever in New Jersey, on Bernice Duncan and his children, the house, the pool, the cars.

Two separate aspects to the case.

I can tell by some of your faces that there is a question as to the exact figures in this case. You will recall I was speaking about $215,000, things like this. Well, of course, it is impossible for you members of the jury to remember all of the exact figures in the case and there are really just two things I want to say about this.

First, as I am sure the Court will instruct you, the Government is not required in this case to prove that Mr. Fisher evaded the precise amount of income that is alleged in the indictment, the exact dollars and cents.

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It is sufficient if you believe beyond a reasonable doubt that the defendant wilfully attempted to evade a substantial portion of his personal income tax.

For example, if the indictment alleged $15,000 that he failed to pay and the proof shows only $14,000, that is not really the issue--

MR. NAFTALIS: Your Honor, I will object to this. He is not the judge here.

MR. FEINBERG: The issue is whether in your own minds you believe that a substantial portion of the tax was evaded by this defendant.

The second thing I want to say on this subject of the dollars and cents and the exact numbers; at the close of the case, of the Government's case, the Government will offer charge charts, summary charts,aids to your memory, the purpose of which will be to summarize the Government's case as to the figures involved in the case.

These charts will be constructed from the exhibits and the testimony that you hear from that witness stand and that is received in evidence.

The weight you give the charts, the summary charts, at the end of the Government's case, will depend, of course, on the weight that you give the exhibits and the testimony during the evidence. It is just an aid to

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your memory, so to speak, because it is of course impossible to remember all of the figures.

Now, the Government's witnesses in this case, ladies and gentlemen, will vary remarkably as you will see. For example, it is most unfortunate the Government must call Rosalie Fisher, the former wife of Mr. Fisher, to testify.

She will testify as to certain expenses in the background of this case, certain moneys that she spent, moneys which she received from Mr. Fisher in the gambling business.

We will also call the accountant, John Singleton, who will testify as to how the returns were made out and how he sat down with both Mr. and Mrs. Fisher and went over the returns and the facts that are in the returns.

More importantly than these two witnesses, ladies and gentlemen, much more importantly, the disinterested witnesses who will testify from New Jersey; Mr. Nussbaum, a lawyer, Mr. Mentes, the contractor. These gentlemen, who have never met Rosalie Fisher and do not even know Mr. Fisher, except through the business they had with him, will testify how Mr. Fisher spent money and gave them money for the house in New Jersey.

These are the crucial witnesses in the Government's

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case.

You will also hear at the end of the Government's case an Internal Revenue Agent, John Spendola, who will testify about how the Government went about computing the tax that was due and how the charts were made up.

This opening, ladies and gentlemen, is just a capsule guide to help you understand the structure of the Government's case as it comes into evidence here at this trial.

The Government, of course, wants a fair trial for this defendant and the Government asks you all during the course of this trial to keep your eyes on the ball.

Above all, to use your common sense in this case and if you use your common sense and listen carefully to the testimony and examine the exhibits as they come into evidence, and after this whole case is in, the Government submits that you will find this defendant Gilbert Fisher guilty beyond all reasonable doubt.

THE COURT: Mr. Naftalis.

MR. NAFTALIS: Judge Weinfeld, Mr. Feinberg, Mr. Foreman, ladies and gentlemen of the jury:

I think Judge Weinfeld told you before my name is Gary Naftalis. I am a lawyer and it is my privilege and my responsibility to represent the defendant Gilbert Fisher,

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the gray-haired gentleman sitting at the second table.

Also sitting at the second table is another lawyer, Fred Wallace, a friend of mine, and he will be trying the case with me.

Mr. Feinberg told you what a pleasure it was to prosecute this case on behalf of the Government, so on and so forth.

I want to tell you what a privilege it is for me as an attorney to represent Mr. Fisher, because I can think of no higher duty for a lawyer than to represent someone who is charged with a crime.

Mr.Fisher pled not guilty to this charge and by that plea, he affirms, he swears that he did not do it. He is not guilty of this accusation, this charge made by the Government against him, and that is all it is, a charge.

We have heard some talk about the indictment in the case. The indictment is just a piece of paper. It is not worth anything more than that. It is not evidence of anything in the world. It is not to be considered by you in any way in weighing whether or not the Government's charge is true or whether it is a false charge, a false accusation made,as Mr. Fisher tells you.

Another thing about an indictment. It is simply another way of starting a lawsuit. Nothing fancy about it.

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If it were a civil case, we would have something called a complaint. If I wanted to sue a fellow for money, I would file a complaint and say John Smith owes me $10,000 over a business deal and either my complaint is true or false and it is up to the jury to determine, and that is the same that is true with an indictment.

Innocent people get indicted, guilty people get indicted, and there is only one group of people in the world to determine whether or not there is anything to this or whether they are mere words, words of the prosecution.

You ladies and gentlemen as jurors, you have a terribly hard responsibility because you act as a shield to insure that the innocent are protected of false accusations and of false and unjust and unfounded charges, because here in the United States, not Mr. Feinberg, not a bunch of Internal Revenue Agents, but you are the United States as far as this case is concerned. It is your job and nobody else's.

This is not a country where the police just accuse and that is it.

As you sit here, ladies and gentlemen, as jurors, you will probably perform one of the most awesome and terrifying responsibilities that you would ever be asked to perform in your lives.

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You will be asked for the next few days to sit in judgment on a fellow human being and you are being asked by the prosecutor to brand a fellow human being as a felon, as an outlaw from society, and that is an awesome and terrible responsibility and I believe on behalf of my client, that you will discharge that responsibility and give him the fair trial he deserves and because, ladies and gentlemen, the prosecution is attempting to brand Mr. Fisher as an outlaw and a felon, they have to meet a very high burden of proof.

It is not just like a civil case where somebody can prove it is more probable than not that something happened. The standards are very high here because the stakes are high. The liberty of a human being is at stake. The dignity of a human being is at stake.

The Government has to prove in this case not just maybe something happened, not maybe somebody spent money.

They have to prove beyond a reasonable doubt each and every allegation, each and every charge in this indictment.

If they miss out on one of them, they lose. I will not intrude and instruct you on reasonable doubt because I can't do it as well as Judge Weinfeld, but he will tell you that at the end of the Government's case.

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You concentrate on that and consider what an awesome burden of proof the Government has in this courtroom because if any of you have a reasonable doubt as to a man's guilt, that is it.

Another thing you ought to consider as you sit here in this case, Mr. Fisher starts here with something in his favor. It is something called a presumption of innocence. It means from the minute this case started and throughout all the taking of evidence, throughout your whole deliberations up until the time you finally decide on a verdict, he is presumed to be innocent of each and every one of the charges in this indictment and that presumption just carries with it as a shield throughout this whole case and I ask you please to keep that in mind because that is the law.

The prosecutor made an opening address and he told you, and I think Judge Weinfeld told you, that is not evidence of anything.

Mr. Feinberg, the able and zealous prosecutor that he is, he is not a witness to anything that happened in this case. He does not know anything more about the facts of this case than you do, or I do, or anybody does, other than the witnesses in the case.

The only thing he knows about this case is what

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people have told him. Therefore, his case is only as good or as bad as the wintesses he calls.

So when he says he is going to prove all these things, what he is telling you is just a hope, a hope that the proof will show these things to your satisfaction, not to his satisfaction.

What I say to you during my opening address, that is not evidence either. I am not a witness any more than Mr. Feinberg is to any of the facts.

What I say to you will be proved during the trial when I say that, I confidently expect it will be proven.

We have an election tomorrow. A lawsuit is a lot different than a political contest. In a political contest a fellow running for office can make a lot of promises. He does not have to live up to them until after the votes are counted. That is not so in a criminal trial.

The prosecutor says he is going to prove something or the defense lawyer says he will prove something. He has to deliver on that commitment before you vote, before you deliberate.

When I stand up here now and get to the facts of this case and tell you what the evidence is going to show, I am going to have to deliver on that commitment to you before you cast your vote, and I ask you to hold me accountable

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for any commitments as to what the proof will show.

The proof in this case on this charge of income tax evasion, the case charges that Mr. Fisher committed income tax evasion for four years by preparing and causing to be prepared and filing and causing to be filed a false and fraudulent income tax return, a joint income tax return.

This is a very strange income tax evasion case for a number of things.

Mr. Feinberg didn't bother to mention to you, and I guess he didn't think it was important -- Mr. Fisher did not even sign the income tax returns that are involved in this case. That is a little strange.

The tax returns are supposed to be false. He didn't even sign it and the signature Gilbert Fisher on those tax returns is a forgery. It is forgery by the Government's principal star witness, Rosalie Fisher, his ex-wife.

Another strange thing about this case, Rosalie Fisher, the Government's start witness, has not even been charged with income tax evasion and we all know from our experience about something called a joint tax return.

Many of us who are married know that. It means you file one with your wife or file one with your husband and it says Gilbert Fisher and Rosalie Fisher. It is two people that file the tax return, it is a joint return.

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Therefore, if these joint tax returns were false for the four years in question, then Rosalie Fisher is just as responsible as Gilbert Fisher, and Gilbert Fisher didn't even sign them. Rosalie signed both names.

Well, Rosalie Fisher is not held responsible by the Government ironically, and the reason is, you will find from the evidence, because she has concocted a false story to pin the rap on her former husband Gilbert Fisher.

You may ask why has she done that? Why do we have this strange situation of a former wife taking the witness stand trying to harm her husband?

Well, I submit the proof will show, and I suppose we ought to get into this as a matter of human nature, Gilbert Fisher left his wife. He rejected her. They have been married for some time and now he is remarried and the father of two wonderful children, so I suppose there is an element of bitterness, spurn, whatever. I suppose that is just how life goes.

Another reason which may be even more significant you will see from the evidence about Rosalie Fisher, the Government's star witness, Rosalie Fisher has committed a number of crimes going well beyond income tax evasion, crimes for which she could have been prosecuted unless the Government gave her a break.

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The evidence will show that Rosalie Fisher, not Gilbert Fisher, is a tax cheat. That Rosalie made false claims for medical deductions-- this is at a time when they were not even living together-- and when the IRS began looking at these tax returns, Rosalie Fisher made up false doctors' bills to substantiate these claims and some of these bills are so obviously phoney, because what she did. she took blank billheads and either wrote in the names or typed in the names. They are obviously phoney.

They certainly would not get by somebody as crackerjack as an IRS agent. I doubt they would get by any of us.

Faced with these problems and given the fact her relations at that time with her former husband were not entirely amicable, Rosalie simply attempted to pin the rap on Gilbert to save herself.

That isn't all the possible crimes that Rosalie committed for which the Government has chosen in its wisdom not to prosecute her for. The evidence will show that Rosalie is an admitted perjurer. We all know that that is one of the most lserious crimes on the statutes. That is lying under oath. The proof here will show that Rosalie Fisher went before a federal grand jury, made up of 23 citizens just like yourselves. She took an oath to tell the truth

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in this very building and repeatedly lied under oath.

The proof will also show that Rosalie Fisher lied when being questioned by federal and Internal Revenue Agents. That is a separate crime.

The proof will show that Rosalie Fisher has never been prosecuted for being a tax cheat. Rosalie Fisher has never been prosecuted for being a perjurer.

Rosalie Fisher has never been prosecuted for lying to federal agents.

Rosalie Fisher, the proof will show, has saved her skin by falsely accusing Gilbert Fisher and becoming the Government's principal witness, and they are stuck with it.

The proof will show that Gilbert Fisher is no tax cheat. Let me tell you what else the proof will show. He is 56 years old. He has been in the Armed Services in this country. He served during World War II. He was discharged honorably after four years of service.

For eight years he was a police officer for the New York City Police Department. He left the Police Department without a stain, without a blemish, on his record. He left under totally honorable circumstances.

The proof will show-- he was in the Police Department, I suppose, from some time in the 40s to sometime in

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the 50s.

The proof will show that during the beginning and early 1960s or so, and continuing for a piece, that Gilbert Fisher in addition to other things he was involved in, like running fish and chips restaurants, stores and the like, he owned a couple of rooming houses with his then-wife Rosalie Fisher, he was a gambler and I say to you quite candidly Mr. Fisher freely admits this fact. He freely admitted it under oath in another proceeding which you will hear testimony about. He doesn't conceal that fact, but he is not on trial for being a gambler, a good gambler or a bad gambler or mediocre gambler.

Being a gambler is not a federal crime. It never has been. It isn't now.

He is on trial for something else.

Mr. Feinberg has claimed that Mr. Fisehr didn't report moneys he received from his gambling activities.

If I tell you, and I ask you to hold me accountable for what I say during this opening statement, that there will be no proof from any person that they ever handed Gilbert Fisher money; in other words,as profits from gambling. You won't hear a witness called by the Government to take the stand and say: Yes, on the 25th of June, 1967, I gave Gilbert Fisher $20,000 because he beat me in

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gambling, whether it was blackjack, numbers or dice, whatever.

There will be no witnesses like that. There will be nothing like that. There won't be a piece of paper which says Gilbert Fisher received-- Mr. Feinberg talks about huge figures, $200,000. There won't be any pieces of paper or documents.

He will put in a lot of documents but none of them will say that at any time during 1967, through 1970, they represent a receipt by Mr. Fisher of gambling income, no way. There won't be any proof like that.

Instead, what you will see, is that the Government in a normal case, suppose a man owns a store, he may have a set of books which show certain things or a doctor may have certain patients and maybe he does not report these things; you could check the patients, you could check the books.

There won't be any witnesses drawn in from the Harlem area to testify about any of those things.

What the Government is proceeding on in this case is a theory. A theory to make up for the absence of direct evidence. The theory is, that if Gilbert Fisher, during these years, spent thousands of dollars, he must have earned it during these years, he must have earned every single penny, and he must have earned it from gambling, even though

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they have no record to substantiate that.

The Government's theory, for all that it is, does not even take into account facts that are obvious to anyone.

First, a gambler like anyone else, I suppose does not win atll the time. At least, most gamblers don't.

You will find the Government's theory does not take into account that maybe Gilbert Fisher lost some money. He spent some money, let's sock it to him. Nor does it take into account, since he has been a gambler for a number of years, that maybe he earned the money before 1967.

Of course, he is not on trial for anything before 1967, so everything has to be lumped into the period beginning 1967.

They don't take that into account. They just dismiss it.

All the Government says is, if Gilbert Fisher spent money, he must have earned it, even if they don't necessarily hae direct proof of people paying him the money or anything like that.

The obligation in this case as in any criminal case is on the Government. It is their burden. Gilbert Fisher sits there. He does not have to prove anything to you during this trial and the Government has to prove that

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the expenditures that Gilbert Fisher made were with moneys he made during 1967 through 1970, not from prior earnings.

They have to prove that it wasn't from a loan, that it wasn't from gifts, and they have to prove that he didn't have losses to offset those gains.

The Government just can't come in here and brand someone a felon by saying you spent a lot of money in 1974, therefore, you must have earned it in 1974; or a lot of people in this country would not be safe.

Basically, that is what the Government is trying to do here. The theory that if somebody spends some money, that is enough. He must have earned it. That is all we need.

I suggest you find that is not enough to strip a man of his liberty and dignity.

Mr. Feinberg used in his opening a lot of fancy adjectives about people being used and so on and so forth.

What he didn't tell you was, that this house in New Jersey was bought by Gil's mom and dad and there won't be a word of testimony in this case that he gave them the money for the deal.

You won't hear a witness take the stand, but Mr. Feinberg wants you to believe that because there is Mom and dad, he must have given them the money.

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Also Mr. Feinberg said that they were on welfare. You will hear no proof that they are on welfare.

Ladies and gentlemen, I think I have given you enough of a capsule of this case. I have no obligation on behalf of Mr. Fisher to make an opening statement to you.

Under the rules of this court,the defendant is never under an obligation to make an opening statement, only the prosecution. I could have sat back but, ladies and gentlemen, that is not the way I play the game. I have stated to you what I believe the evidence will show in this case, and I ask you to thold me accountable for what I have said to you, and you will find at the end of the evidence inthis case, everything I said happened, and I am going to ask you, at the close of the Government's case, when you have heard all the evidence, the close of the evidence in this case, when I have a chance to address you again, I will stand up here and ask you for a verdict of not guilty for Mr. Fisher on all counts.

Thank you very much.

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MR. FEINBERG: Prior to calling the first witness, the Government offers Government's Exhibit 1-9 in evidence.

(Pause.)

MR. NAFTALIS: With respect to Exhibits 1, 2, 3 and 4, which are joint income tax returns of Rosalie and Gilbert Fisher from 1967 through 1970, we have no objection on the grounds of authenticity.

My sole objection is on the ground-- it is not an objection, but I think these should be admitted with an acknowledgment or concession by the Government that Mr. Fisher's signature is not his. I don't think there is any dispute about it.

MR. FEINBERG: I don't think we have to acknowledge it.

THE COURT: That will be developed during the trial.

(Government's Exhibits 1, 2, 3 4 received in evidence.)

MR. NAFTALIS: I have no objection to 7, 8 and 9.

(Government's Exhibits 7, 8 and 9 received in evidence.)

MR. NAFTALIS: Your Honor, with respect to

Government's Exhibits 5 and 6, I have no objection on the ground of authenticity.

I do have an objection on the ground of relevancy.

The indictment in this case relates to the joint tax returns of Gilbert and Rosalie Fisher through the years 1967 to 1970.

Exhibit 5 is an individual tax return of Rosalie Fisher subsequently filed and Exhibit 6 is an individual tax return of Gilbert Fisher subsequently filed for the year 1970.

These are not the tax returns in issue and I object on relevancy grounds.

MR. FEINBERG: The tax computed in these returns is figured into the computations in this case as to credits which his client received. That is the reason we want to put those in evidence.

MR. NAFTALIS: Maybe if I have a chance to examine them? I have not had a chance to check these.

May we take them subject to a motion to strike?

xx. (Government's Ehxibits 5 and 6 received in evidence.)

...

R O S A L I E F I S H E R, called as a witness by the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEINBERG:

Q Mrs. Fisher, I ask you to speak in a loud voice so everybody in the room can hear you.

How old are you?

A 54.

Q Where do you live?

A At 2190 Madison Avenue, Manhattan.

Q Where were you born?

A Charleston, South Carolina.

Q When?

A 1920.

Q What is your father's name?

A Louis Snype.

Q Is he living or dead?

A Dead.

Q What is your mother's name?

A Ann Snype.

Q Is he living or dead?

A Dead.

Q Mrs. Fisher, when did you first come to New York

City?

A I came here in 1938.

Q What did you do when you came to the city?

A From the time I came to New York, I went to the Washington Business School and from there I went to the Washington Laundry, Georg Jensen, and Witty Brothers.

Q These are different jobs?

A Yes.

Q What did you do at Witty Brothers?

A Seamstress.

Q Mrs. Fisher, directing your attention to around the year 1955, what did you do at that time?

A At 1955 I was still working but we went into business.

Q Who is we?

A Rosalie Fisher, Lulu Fisher, Janey Foy and Gilbert Fisher.

Q Who is Gilbert Fisher?

A He is my ex-husband.

Q Do you see him in court?

A Yes.

MR. NAFTALIS: Identification conceded.

Q Who is Lulu Fisher?

A That's Gilbert's mother.

Q Who is Jane Foy?

A That's his aunt.

Q The four of you went into the business?

A Yes.

Q What type of business?

A Fish and chips business as a small restaurant that sells fish and chips.

Q Where was this restaurant located?

A At 511 Lenox Avenue, Manhattan.

Q Let me interrupt.

When were you married to Gilbert Fisher?

A In 1942.

Q Where?

A In Manhattan, Church of the Masters.

Q Do you have any children?

A No.

Q Are you still married to Mr. Fisher?

A No. I am not.

Q When were you divorced?

A 1972.

Q Where?

A In Nevada.

Q At the time you became married to Mr. Fisher in 1942, how was Mr. Fisher employed?

A At the time we got married, Mr. Fisher went into the Service and from the Service he came back and took his old job.

Q What was that?

A That was stevedore at Grand Central Station and from there he went into the Police Department.

Q In 1955, around 1955, when you opened the fish and chips restaurant, was Mr. Fisher still a policeman?

A He was. He was not quite resigned from the Police Department during that period.

Q Did he resign shortly after?

A Yes.

Q Who worked in the restaurant? What did each person do in the restaurant?

A Well, Rosalie Fisher, which is I, I waited on the counter. Lulu Fisher, Janey Foy and also Gilbert at some time fixed the potatoes and the fish.

Q Did anybody else work in the restaurant beside the four of you?

A Some times his father, which is Gilbert Fisher, Sr.

Q What did he do?

A Prepare the potatoes.

Q How long did you have this restaurant, roughly?

A About from six to seven years.

Q And then what happened?

A And from there we was dispossessed and in the meantime we had the 8th Avenue restaurant which was also a small restaurant.

Q You had a second restaurant?

A Yes. That sold food.

Q What happened to that restaurant?

A Everybody left the fish place and went over on 8th Avenue to the second restaurant.

Q What happened to the second restaurant?

A From the second restaurant there was no business.

Q So then what happened?

A From there we went back on Lenox Avenue at 128th Street and opened the same type of restaurant which was the fish and chips.

Q From the period 1955, Mrs. Fisher, to 1965, that ten-year period, how many restaurants do you recall opening or operating?

A From the period of 1955 to 1965, to my knowledge, about six or seven restaurants.

Q These were all in that general vicinity?

A Everything was there on Lenox Avenue.

Q Let me ask you this: From the period 1955 to 1960,

this five-year period, to the best of your knowledge, did you and your husband have any source of income other than the restaurant?

A Only the restaurant.

Q When did you close the last restaurant?

A 1965.

Q After 1960, Mrs. Fisher, did you and your husband have any source of income other than the restaurant?

A After 1960, the restaurant--

Q Aside from the restaurant.

A From 1960 until what otherperiod?

Q From 1960 through 1970, did you have any --

A Oh, yes, from 1960 through 1970, we had two rooming houses.

Q Aside from that, did you have any other source of income?

A During that period of time, I had a savings account.

Q That was not my question.

Listen to the question.

After 1960 --

MR. NAFTALIS: I object. I think the question has been asked and answered.

THE COURT: Overruled.

Q After 1960, Mrs. Fisher, did you have any source of income other than the restaurants and the two houses?

A Yes.

Q What else?

A The other source of income that we had, Mr.Fisher was a gambler during that period of time.

Q What type of gambling?

A The numbers.

Q What do you mean the "numbers"?

A That's a digit that everybody plays.

Q Where was he gambling?

A In Manhattan.

Q Did you assist your husband in this gambling activity?

A When someone comes looking for him, I received telephone calls, and also if someone comes with an envelope, I usually take the envelope.

Q What did you do with the envelope?

A I put it into my pocketbook.

Q And what did you do after that?

A I gave it to Mr. Fisher.

Q What was in the envelope?

A Money.

Q To your knowledge, how long did this gambling

activity last?

A To my own knowledge, from 1960 to 1969.

Q And what happened in 1969?

A Well, in 1969 I had the Esplanade Garage.

Q Listen to the question.

What happened to the gambling activity after 1969?

A I don't know.

Q Directing your attention to the period from 1960 to January 1 of 1967, during that period, were you and your husband able to save any money?

A Yes.

Q How much?

A Altogether $30,000.

Q What did you do with that money?

A That money was in a savings account at different banks.

Q How did the money get from you to the bank?

A Well, the change from the numbers, I usually take it to the New York Bank for Savings --

MR. NAFTALIS: I object to what she usually did. He could ask her what she did.

Q What did you do with the change?

A Put it in our savings account.

MR. NAFTALIS: May we fix a time and place?

Q From the period 1960 to 1967, what did you do with the change that you took?

A Put it into the saving account.

Q How did you take it to the bank?

A In a shopping cart. One week at New York Bank for Savings, the other at Chase Manhattan Bank, and also at Carver's.

Q Why did you use a shopping cart?

A Because it was very heavy.

Q Where did you get the money that you took to the bank during this time?

A From Mr. Fisher.

Q During this period, Mrs. Fisher, from 1960 to January 1st, 1967, did you and your husband have any other business other than the restaurants and the gambling?

A We had the Esplanade Garage.

Q During the period from 1960 to 1967, did you have any other business other than that?

MR. NAFTALIS: I object. The question has been asked and answered.

MR. FEINBERG: Withdrawn.

Q Mrs. Fisher, when did you sell the last restaurant?

A In 1965.

Q Whom did you sell it to?

A Mr. Fisher transacted that business so I don't know.

Q How much did you receive from the sale?

A To my knowledge, roughly, about $3000.

Q $3000?

A Yes.

Q What did you and your husband do with that money?

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A From that money we bought two rooming houses.

Q Where were these rooming houses located?

A One was at 511 West 142nd Street and the other was at 636 West 158th Street.

Q When did you buy these two rooming houses?

A In 1965.

Q Let's deal with the one located at 511 West 142nd Street, just that one.

From whom did you buy it?

A That house at 511 West 142nd Street was bought from Dilbert Phillips.

Q How much did you pay?

A That house cost $23,000.

Q Did you pay off that amount at the time you bought it?

A No.

Q How did You finance it?

A Mr. Phillips took the first mortgage and then at the closing of the deal we paid some money.

Q How much? Do you recall?

A About $7000.

Q I show you Government's Exhibit 10 pre-marked for identification.

Can you identify that?

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A Yes.

Q What is that?

A This is the agreement of the first mortgage from Mr. Dilbert Phillips.

Q Is that signed by you?

A Yes.

Q And by Dilbert Phillips?

A By Dilbert Phillips and also by Gilbert Fisher.

MR. FEINBERG: The Government offers Government's Exhibit 10 in evidence.

(Pause.)

MR. NAFTALIS: No objection.

(Government's Exhibit 10 was received in evidence.)

xx Q You said, Mrs. Fisher, that you paid $7000 cash in this transaction?

A Yes.

Q Where did this money come from, to the best of your knowledge?

A From Mr. Fisher, to the best of my knowledge.

Q Mrs. Fisher, where was the second rooming house you talked about?

A 636 West 153th Street, Manhattan.

Q When did you buy that?

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A 1965.

Q From whom did you buy?

A Mrs. Joseph Greenidge.

Q How much did you pay for that house?

A That house cost $24,000.

Q Did you pay this all at once?

A No. There was a loan from Carver's.

Q Is that the first mortgage?

A That was the first mortgage.

Q How much was that for? Do you remember?

A $14,500; and there was a second mortgage from Mrs. Greenidge, which was $5000.

Q What about the rest of the money?

A A check from Carver, and a second mortgage, and the rest of the money came from Mr. Fisher.

Q I show you Government's Exhibit 11. Can you tell the jury and the Court what this is?

A This is the loan from Carver.

Q Is that your signature?

A That's mine. This is Gilbert Fisher's signature.

Q Is this for the house at 636 West 150th Street?

A Yes.

Q I show you Government's Exhibit 12 and I ask you

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if you can identify this.

A This is for the second mortgage from Mrs. Greenidge.

Q Is that your signature?

A Yes.

Q And that is Mr. Fisher's?

A Yes.

MR. FEINBERG: The Government offers Government's Exhibits 11 and 12 in evidence.

MR. NAFTALIS: No objection.

(Government's Exhibits 11 and 12 were received in evidence.)

xx Q Mrs. Fisher, could you describe these rooming houses for the Court and jury.

A It is a 10-room, brown house, with three floors and one basement.

Q This is at 636?

A Both houses.

Q Did you rent rooms in these houses?

A I rented rooms weekly.

Q Mrs. Fisher, to the best of your knowledge, where did you and your husband get the money that you had to pay in advance to buy these two buildings?

MR. NAFTALIS: Objection, unless she can testify

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to a specific conversation. I don't want speculation or guess.

THE COURT: Overruled.

Testify as to your own knowledge.

A To buy both houses?

Q The money.

A The money that we gave at the closing of the deal came from Mr. Fisher, the gambling money.

Q In 1965 and 1966, did you buy any other property.

A Yes. We bought the Esplanade Garage at 144 Lenox Avenue in Manhattan.

Q What is the Esplanade Garage?

A It is a big spacious building that was one fi up that you mark off for spaces to rent cars for parking.

Q When did you buy that?

A We bought that in 1966, but it started operatin in 1967.

Q In 1966, when you bought it, what was the purcha price?

A The purchase price, to the best of my knowledge was about $9000.

Q From whom did you buy it?

A Mr. Snead.

Q How did you finance the purchase?

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A Mr. Fisher financed that purchase of that garage.

Q Describe this garage.

A It is a very large spacious building that you mark off spaces to rent cars, which you rent cars monthly, $30 per month for each and every car.

Q When did you first receive income from the garage?

A We received income from the garage in 1967.

Q What was your connection with the garage?

A My connection was to collect the rents and see that everybody was happy there by renting the space.

Q Were you a salaried employee of the garage?

A Yes.

Q What was your husband's connection?

A My husband's connection was just to go up and see that everything was right in the garage.

Q Was he a salaried employee?

A He was also a salary.

Q Were there any other employees besides you and your husband?

A We had two or three other employees.

Q I show you Government's Exhibit 13 for identification.

I ask you if you can identify this.

A Yes. This is my quarterly statement from

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taxes for Julian Ward, Harold Connor, Gilbert Fisher, Rosalie Fisher and William James.

Q Were these employees of the garage?

A That's all the employees at the garage.

Q This was your quarterly tax statement for the garage?

A Yes.

THE COURT: That was for the withholding taxes?

THE WITNESS: Taxes for the employees at the garage.

Q Is this commonly called a 941 form for withholding?

A No. This is not the 941 form, I don't think.

Q This is for taxes?

A Yes.

MR. FEINBERG: The Government offers this exhibit.

MR. NAFTALIS: Your Honor, this document seems to cover 1967, 1968, and part of 1969.

Is there any additional part that covers anything more?

MR. FEINBERG: No.

(Pause.)

MR. NAFTALIS: No objection.

xx (Government's Exhibit 13 was received in

evidence.)

Q How long did the garage remain open?

A The garage remained open from 1967 up until part of 1969.

Q Then what happened?

A Then we closed it in June because the landlord refused to fix the roofing of the garage.

Q From the period 1967 through 1970, did you and your husband receive money from any other source besides the grand jury?

A No.

Q Listen to the question:

From 1967 --

MR. NAFTALIS: I object. The question has been asked answered. If Mr. Feinberg doesn't like the answer that he got from the witness, I'm sorry.

THE COURT: The jury is instructed to disregard the statements made by both counsel.

Reframe the question.

Q From 1966 through 1970, was your husband in the gambling business?

A Yes.

MR. NAFTALIS: Object to the leading, your Honor.

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THE COURT: Overruled.

It is leading, but I will allow it. It has been answered.

Q From 1967 through 1970, did you receive rents from the two houses?

A Rents from the two houses, yes.

Q As to these two houses, Mrs. Fisher, did anyone assist you in the management of the two houses?

A Yes.

Q Who?

A Mr. John Singleton.

Q Who is he?

A He was my accountant and he also manages both houses.

Q What did he do?

A He collected the rents and see the upkeep of the buildings.

Q What else did he do?

A Then from that he will send me a monthly statement itemizing the tenant's name and the amount of money paid.

Q Did he send you any money at the end of the month?

A At the end of each month he will send me a

monthly statement and a check.

Q What would you do with the check?

A The check will go in the checking account.

Q Did you pay Mr. Singleton for what he did?

A No. He takes his commission out before he sent me the monthly statement.

Q Beginning on January 1, 1967, Mrs. Fisher, did you and your husband have any bank accounts, to the best of your knowledge?

A Yes.

Q Where did you have a bank account?

A I had one at the New York Bank For Savings, and the other one at the Chase Bank For Savings.

Q Are these savings accounts?

A Yes, for Rosalie Fisher.

Q When did you start the savings account at the New York Bank For Savings?

A For the New York Bank For Savings, I started that in 1964.

Q I show you Government's Exhibit 14 for identification.

Can you identify that?

A Yes. This is my registration card for June 11, 1964, Rosalie Fisher.

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Q What bank is this?

A New York Bank For Savings.

Q Is that your signature?

A That's my signature.

MR. FEINBERG: The Government offers Exhibit 14.

MR. NAFTALIS: No objection.

(Government's Exhibit 14 was received in evidence.)

xx THE COURT: We will now take our luncheon recess.

Members of the jury, please be here promptly so that we can start at 2 o'clock.

(Time noted: 1.05 p.m.; luncheon recess.)

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AFTERNOON SESSION

(2.00 p.m.)

(In open court - jury present.)

R O S A L I E F I S H E R , resumed.

THE COURT: Proceed, please.

DIRECT EXAMINATION (Continued)

BY MR. FEINBERG:

Q Mrs. Fisher, just prior to the luncheon break, you testified that you opened an account at the New York Bank For Savings in 1964, is that correct?

A Yes.

Q How long did you maintain this account?

A I still maintained that bank account.

Q Did you make periodic deposits during the period of this account?

A Yes.

Q Did you keep a record of your deposits?

A Yes.

Q I show you Government's Exhibit 15 pre-marked and ask you if you can identify that.

A Yes. This is my passbook.

Q For that account?

A Right.

Q At the New York Bank For Savings?

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A Yes.

MR. FEINBERG: The Government offers 15 in evidence.

(Pause.)

THE COURT: Mr. Naftalis, the only question is the admissibility of the document. You either object or you don't object. I don't know what takes so long.

MR. NAFTALIS: I haven't seen this document.

Second of all, it is to what period of time the document is being offered.

THE COURT: It is being received only with respect to the period of time covered in the indictment.

MR. NAFTALIS: No objection.

(Government's Exhibit 15 was received in evidence.)

xx Q Mrs. Fisher, you also testified you had a savings account at the Chase Manhattan Bank, is that correct?

A Yes.

Q As of January 1st, 1967?

A Yes.

Q When did You open this savings account, do you recall?

A 1963.

Q I show you Government's Exhibit 16 pre-marked and

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ask you if you can identify that.

A Yes.

Q What is that?

A This is my registration from New York Bank. This is Chase Manhattan Bank.

Q Is this the Chase Manhattan Bank signature card?

A Yes.

Q For your account there?

A Yes.

Q And it is dated 1963?

A Right.

Q I show you Government's Exhibit 17 and ask you if you can identify that?

A This is my passbook for Chase Manhattan Bank.

Q For this account?

A For that account.

MR. FEINBERG: The Government offers 16 and 17 as redacted.

MR. NAFTALIS: No objection to No. 16.

(Government's Exhibit 16 was received in evidence.)

(Government's Exhibit 17 was received in evidence.)

Q Mrs. Fisher, as to this account at Chase

Manhattan, how long did you maintain that account?

A I still maintain that account.

Q Aside from these savings accounts, Mrs. Fisher, did you have any checking accounts during this period, 1967 through 1970?

A Yes.

Q Where?

A At Freedom National Bank For Savings and at Chase.

Q Chase Manhattan Bank?

A Chase Manhattan Bank.

Q When did you open the checking account?

A 1970.

Q During the period 1970, did you maintain a checking balance on that account?

A Yes.

Q I show you first Government's Exhibit 18 marked for identification and ask you if you can identify that.

A This is my registration at Chase.

Q Is that your signature?

A This is my signature.

Q What is the date?

A The 3rd, 1970.

Q March 3rd, 1970?

A Yes.

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Q That is Government's Exhibit 18.

I show you Government's Exhibit 19. What are those?

A These are my canceled checks from Chase Manhattan Bank.

Q Are these the checks or is this the monthly statement?

A The monthly statement at Chase for the checking account.

Q Did you receive these monthly statements from Chase every month?

A Yes, I do.

Q For your account there?

A Yes.

MR. FEINBERG: The Government offers 18 and 19 in evidence.

MR. NAFTALIS: With respect to 18, your Honor, we wouldn't have any objection to that.

Regarding Exhibit 19, the document I saw just now for the first time, I don't understand the relevancy of this. This is a monthly statement of checks drawn on the account of Rosalie Fisher for the year 1970.

My understanding of the nature of the Government's proof is, my client, Mr. Fisher, stopped supporting

this lady in 1969, so I don't quite understand how expenditures she makes in 1970, a full year even under the Government's own theory he stopped contributing any money to her support and in any way being chargeable to him in a criminal trial.

MR. FEINBERG: Your Honor, these expenditures are charged to Mr. Fisher in light of the fact that the underlying expenses for these checks are attributable to Mr. Fisher so we have this record showing what Mr. Fisher's expenditures were in 1970.

THE COURT: It may be received.

(Government's Exhibits 18 and 19 were received in evidence.)

xx

Q Mrs. Fisher, how did you know what your balance in this Chase account was at various times? Did you have any personal records?

A I have my own personal record book.

Q Of the Chase account?

A Of the Chase account.

Q I show you Government's Exhibit 20 and ask you if you identify this?

A This is my record book at the Chase -- I mean -- at the Chase Bank of Savings and these are my canceled checks.

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Q Are these the checks or the deposit slips?

A Deposit slips.

Q Is this your own personal record of the account?

A This is my own personal.

MR. FEINBERG: The Government offers 20.

MR. NAFTALIS: May I ask a couple of questions on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q Mrs. Fisher, I show you what has been marked as Government's Exhibit 20 for identification. Perhaps you can help explain to me what some of these things are.

These top pink things, what are they?

A Those are deposit slips in the checking account.

Q And that is the same checking account as Exhibit 19, this bank?

A Right.

Q The Chase Bank?

A Right.

Q Then there is a white kind of card with writings and numbers?

A This is my record card for myself. Those are the checks I made out and sent checks to different

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individuals and those are the records and the amounts of money I sent to them.

Q These refer to the checks that went out?

A Expenditures that I had paid.

Q And this would also be on here?

A That is right.

Q So this lists who they were from. I take it some of these things relate to your own personal expenses?

A Miscellaneous and my own household expenses.

Q Rent?

A Right.

Q Telephone bill, New York Telephone?

A Yes.

Q What is Axelrod Management?

A That is where I park for my car. The parking space for my car.

Q Siletion Mission?

A That is charitable. That I send to them.

MR. NAFTALIS: Your Honor, I would object to Exhibit 20 and also renew my objection to Exhibit 19.

Mr. Feinberg represented to the Court that Exhibit 19 came in in this 1970 checking monthly statements for Mrs. Fisher under the theory these represented payments of bills of her husband, if I heard right.

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20 is the corresponding records and at least by my lights it doesn't support any such thing. The overwhelming majority, not at all because I haven't checked every one of them, relate to Mrs. Fisher paying her normal regular legitimate expenses of living like rent, telephone, so on and so forth. How this man can be charged with that after he stopped supporting her, even by the Government's area a year before, I don't understand.

MR. FEINBERG: Whatever the expenses are for is irrelevant. The question is, is the expenditure chargeable to Mr. Fisher. The Government's theory is it is.

THE COURT: This is one of the things in question.

MR. FEINBERG: yes.

MR. NAFTALIS: Your Honor, the Government's theory --

THE COURT: I haven't heard the Government's theory.

Overruled.

MR. NAFTALIS: Mr. Feinberg will concede --

THE COURT: I'm not trying this case piecemeal on the statements made by you.

Objection overruled. You can make your motions at the end of the Government's case.

xx (Government's Exhibit 20 was received in

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evidence.)

BY MR. FEINBERG:

Q When did You open your checking account with the Freedom National Bank?

A Freedom National Bank in 1965.

Q How long did you maintain that account?

A I still maintain that account.

Q How do you know what your balance was in the Freedom National Bank from 1967 to 1970?

A From my record books I kept that home.

Q For the years 1967 through 1970?

A Right.

MR. FEINBERG: I offer 21 and 22 in evidence.

MR. NAFTALIS: No objection to Exhibit 21, the signature card.

(Government's Exhibit 21 was received in evidence.)

2 xx MR. NAFTALIS: With respect to 22, with regard to the years 1967, 1968, and 1969, I have no objection.

With regard to 1970, your Honor, I make the same objection I made before which you overruled regarding the fact he wasn't supporting her at that time and I also make one further objection; that the exhibit be redacted in any event because, and I am sure Mr. Feinberg will agree, there

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are records of 1971, only a few on the top page.

MR. FEINBERG: That is the statement day.

MR. NAFTALIS: You see the check January 12th, January 13th, January 14th.

THE COURT: It will be redacted. Otherwise it will be received.

(Government's Exhibit 22 was received in evidence.)

xx Q Mrs. Fisher, how did you maintain records of your account for the Freedom National Bank?

A By my record book that I kept at home.

Q I show you Government's Exhibit 23 and ask you if you can identify that?

A These are my deposit slips which I used for my checking account at the Freedom National Bank.

Q Exhibit 24?

A This is my record book I kept at home, for my expenditures I paid out.

Q For this account?

A For this account.

MR. FEINBERG: The Government offers 23 and 24.

MR. NAFTALIS: No objection to 23.

(Government's Exhibit 23 was received in

xx evidence.)

MR. NAFTALIS: Regarding 24, the check register, I would make the same objection regarding the year 1970. All it has is personal expenditures of this lady. No expenditures of this man as far as I can tell. It is similar to the Chase Bank situation.

THE COURT: Objection overruled.

(Government's Exhibit 24 was received in evidence.)

xx Q Mrs. Fisher, to the best of your own knowledge, from the period January 1, 1967 to the end of December, 1970, through 1970, to the best of your own knowledge, did your husband, Mr. Fisher, have any savings or checking accounts during that period?

A Not to my knowledge.

MR. FEINBERG: The Government will offer 25, 26 and 27.

MR. NAFTALIS: With regard to 25 and 26, your Honor, these are accounts of Mr. Fisher, trust accounts for his two children. I assume the Government will connect their relevance at some point in time. May they be taken subject to motion to strike if there is no connection?

THE COURT: Yes.

xx (Government's Exhibits 25 and 26 received in evidence.

MR. NAFTALIS: With respect to Exhibit 27, your Honor, which is simply a letter from a bank to the Internal Revenue Service purporting to write down what the accounts actually say, I would object at this time. It is not a record of anything.

(Pause.)

THE COURT: Objection sustained.

Produce the original transcript.

MR. NAFTALIS: That may be something wherein if Mr. Feinberg can give me the original transcript --

[illegible] objection.

Produce it.

Q Mrs. Fisher, you testified that you didn't know

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about these accounts, is that correct?

A That's right.

Q But you placed money in these accounts?

A At the Carver Bank for Savings for Gilbert Fisher, yes.

Q You knew about that account?

A Yes.

Q Did you place money in these accounts, both Mr. Fisher's account and your account, during the period from 1967 through 1970?

MR. NAFTALIS: It is not an account of Mr. Fisher. It is a trust account for the two children.

Q Did you deposit money in these various accounts?

A And to Rosalie, savings account, and the Gilbert Fisher account which was at Carver.

Q And your checking accounts?

A My two checking accounts.

Q Did you deposit money through 1967 to 1970 in these accounts?

A Yes.

Q What was the source of the money? Where did you get the money that you put in these various accounts during this period?

A It came from gambling from Mr. Fisher.

Q Any other source?

A And from the two houses and the Esplanade Garage.

Q In what form did Mr. Fisher give you this money?

A The money that I put into the checking account, those were bills to pay the bills.

Q What was the form? Was it paper money?

A Bills, paper money.

Q What about the savings account?

A That was the change from the gambling.

Q This was during the period 1967 through 1970?

A Right.

Q Mrs.Fisher, to the best of your knowledge, what did your husband do with the wages that he received from the Esplanade Garage?

A He kept it.

Q Aside from the three sources that you have just mentioned, the gambling, the houses, and the garage, did you and your husband receive any other money during the period 1967 through 1970?

A Yes.

Q What?

A I made a loan to my mother in 1967.

Q You made a loan to your mother or you made a loan with your mother?

MR. NAFTALIS: Objection. She was asked and answered the question.

Now he is trying to correct her.

She testified it was a loan to her mother.

Q Will you describe these loans?

A The loan was to send me money because we needed money to pay bills.

Q Who was to send you money?

A My mother.

Q When did you first receive money from your mother?

A In 1967.

Q How much money did you receive?

A In 1967 that was $3,000.

Q Mrs. Fisher, before you received money from your mother, did you have a conversation with your husband Gilbert Fisher?

A Yes.

Q What was that conversation?

A That he needed some money so I told him that I would call my mother and see whether I could get the money.

Q What did he say?

A So he said it was okay with him.

Q What did you do?

A So I called.

Q Did you speak with your mother?

A I spoke with my mother.

Q You received some money in 1967, is that correct?

A In 1967 I received $3,000.

Q What about 1968?

A In 1968 I received $2,000.

Q In 1969?

A In 1969 it was $2,000.

THE COURT: These were from your mother?

THE WITNESS: Yes.

Q At the time you had your conversation with your husband about this money, asking your mother for money, did you have money in your bank accounts?

A Yes. That was my rainy day money. That money was not supposed to be touched.

Q Did you have a conversation with your husband about that rainy day money?

A Yes.

Q What did you say and what did he say?

A That was rainy day money not to be touched.

Q Who said that?

A We both said it.

Q I show you Government's Exhibit 29. I ask you if you can identify that document.

A Yes. This is the agreement from my mother Anna Snype.

Q Is this the agreement for the loans you received from her?

A Yes.

Q And does this mention the loans you received each year?

A Yes.

Q Is that your signature?

A That is my signature.

Q Where was this made, do you recall?

A Not offhand where this was made but I had it notarized in North Carolina.

Q When you were there?

A When I was there.

MR. FEINBERG: The Government offers 29.

(Pause.)

MR. NAFTALIS: May I ask a couple of questions on voir dire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q Mrs. Fisher, I show you this Exhibit 29 for identification. When was this document signed?

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A This document was signed in 1971.

Q In other words, it was signed after the fact?

A After the fact, yes.

MR. NAFTALIS: I have no objection to this.

xx (Government's Exhibit 29 received in evidence.)

BY MR. FEINBERG:

Q Did you repay any of the money you borrowed from your mother, Mrs. Fisher?

A Yes, we did.

Q When did you repay it?

A Well, some was in 1967, 1968 and also in 1969.

Q Where did you get the money to repay it?

A The money that I paid my mother back came from Mr. Fisher.

Q Did you repay any of it from the bank accounts?

A No.

Q Mrs. Fisher, during the period 1967 through 1970, did you receive any other money in the form of any gifts, loans, or inheritances?

A No.

Q Did there come a time that you rented a safe deposit box?

A Yes.

Q When did you first rent a safe deposit box?

A In 1966.

Q Where?

A At Manufacturers Hanover Trust.

Q Which branch?

A The branch at 125th Street.

Q Who rented the box?

A Rosalie Fisher.

Q What did you rent exactly? Describe it to the jury and the Court.

A When I first rented the box, there were two small boxes.

Q When was this?

A At the Manufacturers Hanover Trust.

Q When?

A The latter part of 1965 going into 1966.

Q You rented two small boxes?

A Yes.

Q And then what happened?

A A year later, Mr.-- I forget his name -- rented me a larger box.

Q When was that?

A In 1966.

Q What part? Do you recall when in 1966?

A In November.

Q This was the same branch?

A The same branch.

Q How much did it cost to rent the big box?

A The big gox cost $25.

Q And --

A And now it cost me $35 and some change.

Q How long did you keep this big box?

A I still maintain that big box.

Q I show you Government's Exhibit 30 for identification.

I ask you if you can identify that.

A Yes. This is my registration from Manufacturers Hanover Trust for the box.

Q Is that your signature?

A This is my signature.

Q Is that your husband's signature?

A This is Gilbert'ssignature, yes.

Q What is the date of Gilbert's signature by his name there?

A January 31, 1969.

Q I show you Exhibit 30A marked for identification.

Can you identify that?

A Yes. This is my registration for the same box.

Q That is the payment schedule there?

A This is when I went into the safe deposit box.

MR. FEINBERG: The Government offers 30 and 30A into evidence.

(Pause.)

MR. NAFTALIS: Your Honor, I want to ask one or two questions on voir dire.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q Exhibit 30, this is your signature on the top, Rosalie Fisher?

A Yes. This is the manager of the safe deposit box, Mr. Butterfield.

Q This shows thatyou opened this November 15, 1966. is that correct?

A Yes.

Q Is that Mr. Fisher's signature?

A Yes.

MR.NAFTALIS: No objection to this, 30 and 30A.

xx (Government's Exhibits 30 and 30A received in evidence.)

BY MR. FEINBERG:

Q Mrs.Fisher, when you went to the big box in November of 1966, did anyone else have access to that box?

A No.

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Q Did there come a time when anybody else gained access to that box?

A Yes.

Q When?

A In 1969, Mr. Fisher.

Q What happened in 1969?

A Well, he wanted to go to the safe deposit box so we got-- on our way to the bank, we got power of attorney so that Mr. Fisher could go into the safe deposit box.

Q Did you have a conversation with your husband concerning his access to that box?

A He wanted -- yes.

Q When?

A In 1969.

Q What was that conversation?

A He wanted to see what was in the box, so I said that we will go to the bank.

Q Did you go to the bank?

A Yes.

Q I show you Government's Exhibit 31.

Can you identify that document?

A Yes. This is the document to give Mr. Fisher power of attorney to go into the safe deposit box.

Q Is this 1969?

A This is 1969.

Q Is that your signature?

A This is my signature.

Q Is that Mr. Fisher's signature?

A Yes.

MR. FEINBERG: The Government offers 31 in evidence.

(Pause.)

MR. NAFTALIS: No objection.

xx (Government's Exhibit 31 received in evidence.)

Q Mrs. Fisher, beginning in November of 1966 through 1970, how many times, roughly, did you go to this safe deposit box?

A In different intervals that I went to the safe deposit box to put money in thatMr. Fisher gave me from gambling.

Q In 1966, November, when you rented the big box, di you put anything into the box at that time?

A When I first rented the two small boxes--

Q I'm asking you about the big gox in November of 1966.

Did you put anything in the box at that time?

A The papers that I had.

Q What papers?

A Very important papers that I kept in the box.

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Q Did you put any money in at that time?

A No.

Q When did you first put money in the big box?

A From 1967.

Q How much money did you put in the big box from 1967 through 1970?

A Well, from 1967 up until 1970 --

Q Through 1970?

A $75,000 total.

Q Where did you get that $75,000 that was put in the box?

A From Mr.Fisher.

Q Did Mr. Fisher say anything to you when he gave you that money?

A That money was supposed to stay there until he needs some money.

Q Who said that?

A Mr.Fisher.

Q When?

A One morning he came and he wanted some money so he wanted to take the $75,000 away.

Q When? What year?

A 1971.

Q What denominations were the bills in in this box?

Do you recall?

A Well, there were big bills, 10s and 20s.

Q Is that money still in the safe deposit box?

A No.

Q What happened to it?

A I gave it to Mr. Fisher.

Q When?

A In 1971.

Q Where did you give it to him?

A At Mr. Bruce's office.

Q Who was Mr. Bruce?

A Mr. Bruce was my attorney.

Q What were the circumstances surrounding this meeting at Mr. Bruce's office?

A Thathe needed money.

Q Who?

A Mr. Fisher.

MR. NAFTALIS: Objection to the question and answer.

Let him ask for a conversation and not what are the circumstances.

MR. FEINBERG: I'll rephrase it.

Q Did you have a conversation at Mr. Bruce's office?

A No. There was no conversation at Mr. Bruce's office.

Q Did there come a time when you gave that money to Mr. Fisher?

A Yes.

Q Did you receive a receipt from Mr. Fisher?

A No.

Q In 1971 did you give Mr. Fisher anything besides the $75,000?

A In 1971 I gave Mr. Fisher the $75,000 and also the deed to the 636 house.

Q What about the other house?

A The other house I kept.

Q To thebest of your recollection, Mrs. Fisher, did you or your husband have any money that you kept in your home during the period 1967 through 1970?

A No.

Q To the best of your knowledge, did you or your husband keep any large amounts of money on your persons during the period 1967 through 1970?

A No.

Q Mrs. Fisher, you testified that you were married to Gilbert Fisher in 1942, is that correct?

A Yes.

Q Did there come a time when you became separated?

A Yes.

Q When?

A In May of 1967.

Q What were the circumstances surrounding that separation?

A Well, Mr. Fisher abandoned me on incompatibility.

Q That was in 1967?

MR. NAFTALIS: Objection to leading. He can ask her when. He doesn't have to suggest an answer.

THE COURT: Try to avoid leading, please.

Q What happened in May of 1967?

A He abandoned me on incompatibility.

Q Did he leave you for good?

A Off and on he would come back.

Q Did he take anything with him when he left?

A No.

Q Do you know where he went?

A No, I didn't.

Q Did you talk to him about this?

A Yes.

Q When?

A Whenever he comes in and I'm there at the house.

Q What did you say to him and what did he say to you?

MR. NAFTALIS: Objection, your Honor.

Can we fix a time andplace?

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Q When you say "whenever he came in the house," when was this? What year?

A This was during the time of 1967, 1968 and maybe 1969, because he comes off and on.

Q What was the conversation you had?

A He would come in in the morning there and I will say to him, "When are we going to talk about this?"

So Mr. Fisher said to me that people don't talk about things like this in their home.

So I never got an answer from him.

Q Mrs. Fisher, after May of 1967, did your husband continue to support you in any way?

A Yes.

Q How long did he support you? What period?

A He supported me from 1967 through 1969.

Q How much support did he provide for you in 1967?

A Well, he gave me money to put in the checking accounts.

Q In 1967?

A 1967, 1968 and also 1969.

Q What about 1970?

A Well, 1970 is the money that Mr. Fisher gave me from 1969 into 1970.

Q In 1970 you lived off the money you received in

1969?

MR. NAFTALIS: Objection, your Honor, to the leading again.

THE COURT: Sustained.

Try not to lead.

Q How did you live in 1970? What was your source of income?

A My source of income was from the house that I had and from my rainy day money.

Q This rainy day money, when did you receive that?

A I went to the bank and drew out money from my savings account.

Q What about the money in the safe deposit box?

MR. NAFTALIS: Objection, your Honor. He is leading again.

THE COURT: Overruled.

A No.

Q You didn't touch that money?

A I didn't touch that money at all.

Q In 1969, Mrs. Fisher, did your husband give you anything else besides the money to pay the bills?

A In 1969 Mr. Fisher fave me a Cadillac car.

Q A new Cadillac?

A Yes.

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Q Mr. Fisher, did there come a time when you became divorced from your husband?

A Divorced-- I had a divorce decree in 1972.

Q Where?

A In Nevada.

Q What were the grounds for divorce, do you recall?

A It was a divorce decree.

Q What were the grounds?

A Abandonment and incompatibility.

Q Who brought the action for divorce?

A Mr. Fisher.

Q Did you appear to contest the divorce?

A Yes.

Q Did he appear?

A Yes.

Q Were you represented by an attorney?

A Yes.

Q Who was he or who were they?

A Mr. Kenneth Bruce and Mr.Horton.

Q Was your husband represented by anybody?

A Yes. Mr. Stanley Thomas and Mr. Cohen.

Q Was there a hearing in Nevada?

A Yes,there was.

Q And a divorce decree was entered?

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A Yes.

Q Mrs. Fisher, you testified that you had checking accounts at the Freedom and Chase Banks, is that correct?

A Yes.

Q How frequently did you use these accounts during the period 1967 through 1970?

A Monthly, once a month.

Q What did you use the accounts for?

A To pay my bills, and also to pay Mr. Fisher's insurance bills.

Q To pay your bills and to pay Mr. Fisher's insurance bills?

A Yes.

Q From your own personal knowledge, Mrs. Fisher, did your husband pay any bills by check?

A Not to my knowledge.

Q Did you pay the bills?

A Yes.

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Q Mrs. Fisher, I show you Government's Exhibit 32 for identification and ask if you can identify those?

A This is my canceled check from Freedom National Bank for the car insurance.

Q What is the date?

A February 26, 1968.

Q Is that your signature?

A This is my signature.

Q What was this for?

A For my car insurance.

Q And this is on the Freedom National Bank, is that correct?

A Yes.

MR. FEINBERG: The Government would offer 32 in evidence.

MR. NAFTALIS: No objection.

(Government's Exhibit 32 was received in evidence.)

xx Q Mrs. Fisher, directing your attention to April of 1966, did you purchase an automobile at that time?

A Yes.

Q What type?

A A 1967 Chevrolet.

Q Let me show you Government's Exhibit 33 and ask

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you if that refreshes your recollection?

A Yes.

Q In 1966, did you purchase an automobile?

A Yes.

Q What type of automobile?

A A Cadillac.

Q What year?

A 1966.

Q Where did you purchase that Cadillac from?

A From De Feo Cadillac Company in White Plains.

Q How did you finance the purchase of that automobile?

A I made a loan at my bank of savings, New York Bank of Savings.

Q I show you the Government's Exhibit 34 and ask you if you can identify this.

A Yes. This is the agreement for the loan at New York Bank of Savings.

Q And what is the date of this loan?

A April 6, 1966.

Q What is the amount of the loan?

A $3000.

Q Will you look again?

A $3344.

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Q Did you take this loan out at that time?

A Yes.

Q And did you use your book as collateral?

A Yes.

Q Did you pay back this loan?

A Yes.

Q How many payments did you make?

A 18 monthly payments.

Q You paid 18 months?

A Yes.

MR. FEINBERG: The Government offers 34.

MR. NAFTALIS: Your Honor, this is prior to the years in question. I take it the document isn't being offered for that purpose.

MR. FEINBERG: That is correct.

MR. NAFTALIS: Is the only relevance of this is that payments were made on this document by somebody in the world from 1966 on?

No objection.

(Government's Exhibit 34 was received in evidence.)

xx Q Did you make the payments in 1966 for this automobile?

A Yes.

Q Where did you get the money to make those payments?

A From Mr. Fisher.

Q Mrs. Fisher, directing your attention to March 1969, did you purchase another automobile at that time?

A Yes.

Q What type?

A A 1969 Cadillac.

Q Where?

A At De Feo.

Q How did you pay for the car?

A I took my 1966 Caddy and deposited it on the new one 1969 Caddy.

Q What about the rest of the money?

A The rest of the money came from Mr. Fisher.

Q I show you Government's Exhibit 36 and ask if you can identify that.

A Yes. This is an invoice of the car that I bought in 1969, March.

Q For the Cadillac?

A For the Cadillac.

MR. FEINBERG: The Government offers 36?

MR. NAFTALIS: No objection.

(Government's Exhibit 36 was received in

xx

evidence.)

Q Mrs. Fisher, I neglected to ask you in January of 1967 did You purchase an automobile at that time?

A Yes. A 1967 Chevrolet.

Q From where?

A From Rose up on Fordham in the Bronx.

Q How did you pay for the car?

A By giving in my old car for the new and the rest of money came from Mr. Fisher.

Q I show you Government's Exhibit 35 and ask you if you can identify it.

A This is the invoice from Rose Corporation.

Q For what?

A For the Chevrolet I got in 1967.

MR. FEINBERG: The Government offers 35.

MR. NAFTALIS: There is something attached to it.

MR. FEINBERG: I will remove it.

(Government's Exhibit 35 was received in evidence.)

xx

MR. FEINBERG: May I show 34 and 35 to the jury?

THE COURT: Yes.

MR. FEINBERG: I am sorry, 35 and 36.

THE COURT: Yes.

MR. FEINBERG: And these are invoices.

35 is a car invoice for a car sold to Rosalie Fisher, a 1967 Chevrolet, the price is $4,031.65 and Government's Exhibit 36 is De Feo Cadillac, March 20, 1969 sold to Rosalie Fisher, 1969 Cadillac Coupe De Ville. Total price $7,770.35.

MR. NAFTALIS: The total price Mr. Feinberg said $7,770. It shows that price is reduced by the trade-in.

THE COURT: The price isn't reduced. There are allowance against it for a trade-in. The price is still the same.

MR. NAFTALIS: Your Honor is correct. I don't know much about cars.

THE COURT: The price remains the same. It is simply a credit, that is all.

MR. NAFTALIS: There is a credit of $3,460 against that price of $7,770 for the used car traded in and the balance is what has to be paid.

THE COURT: We will take a mid-afternoon recess at this point.

(Recess.)

(In open court - jury present.)

THE COURT: Proceed, please.

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BY MR. FEINBERG (Continuing):

Q Mrs. Fisher, I want to show you a series of exhibits and ask if you can identify them, please.

Government's Exibit 37 for identification.

A Yes.

Q What are these?

A These are my canceled checks from Freedom National Bank and to the motor vehicle for my license plate on the cars.

Q And are these sall signed by you?

A Yes.

Q Government's Exhibit 38 for identification, can you identify 38?

A Yes. These are my canceled checks from Chase Manhattan Bank to the Veterans Administration Insurance Company.

Q This is Chase and Freedom checks?

A Yes.

Q Are your signatures on all of these checks?

A Yes.

Q What are these checks for?

A For the Veterans Insurance, for Gilbert Fisher.

Q Did you make the payments periodically to the VA toward the insurance?

A Yes.

Q Did you talk to your husband about these checks?

A Yes.

Q What did he say and what did you say?

A He knew all about these checks to the Veterans Administration Insurance because that is his premium.

Q Did you tell him that you wrote those checks?

A Yes.

Q And Government's Exhibit 39 for identification, can you identify those?

A These are my checks from Freedom National Bank to the H & H Association for the liability on the house.

Q This is insurance?

A This is insurance.

This is for the same thing, the insurance of the car.

Q Did you sign these checks?

A Yes, and this for the insurance of the Esplanade Garage.

Q You signed all of these checks?

A Yes.

MR. FEINBERG: The Government offers 37, 38 and 39 in evidence.

MR. NAFTALIS: I have no objection except there

are some 1970 checks and I assume your Honor is taking them in subject to the same ruling as before?

THE COURT: Yes.

(Government's Exhibits 37, 38 and 39 were received in evidence.)

xx

Q Mrs. Fisher, I show you Government's Exhibit 40 marked for identification.

Can you identify those?

A These are my canceled checks from Chase Manhattan Bank to the Metropolitan Life Insurance and also for hospitalization for Gilbert Fisher, Rosalie Fisher, Jeffrey Fisher and Gilbert Fisher, Jr.

Q Did you sign all these checks?

A Yes.

Q Are they also on the Freedom National Bank as well as Chase?

A Yes.

Q How often did you make payments to Metropolitan Life on these policies?

A Every six months and sometimes every three months.

Q Did you make all the payments?

A Yes.

Q Did you talk to Mr. Fisher about these checks to

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Metropolitan Life?

A Yes, because that is the money he gave me to put in the checking account to pay the bills.

MR.NAFTALIS: May I have the question and answer read back?

(Question and answer read.)

Q Did you ever ask Mr. Fisher about paying policies --

MR. NAFTALIS: Objection to the leading.

THE COURT: Let him finish his question.

Q Did you ever ask Mr. Fisher about paying the policies of the two young children?

THE COURT: Objection sustained.

Q Did you have a conversation with Mr. Fisher about these checks, yes or no?

A Yes.

Q What was the conversation?

A The money that Mr. Fisher gave me is supposed to pay all the bills.

Q About these checks?

A These checks also because these checks are from my checking account.

Q Government's Exhibit 41 for identification, can you identify those?

A These are my canceled checks from Chase and also

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from Freedom National Bank paid to Metrpolitan Insurance for Gilbert Fisher.

Q What are these checks for?

A That is for Gilbert Fisher premium policy.

Q Did you make all the payments for that policy?

A Yes.

Q How often did you make payments?

A Once a month -- once every three months, I meant to say.

Q Did you talk to Mr. Fisher about these checks?

A Yes.

MR. FEINBERG: The Government offers 40, 41 and 41-A in evidence.

MR. NAFTALIS: We have no objection to these exhibits.

Mr. Feinberg and I have agreed that there are two insurance policies involved here. A health insurance policy and a life insurance policy and that the two children, Gilbert Fisher, Jr. and Jeffrey Fisher are on the health insurance policy.

MR. FEINBERG: Yes.

(Government's Exhibits 40, 41 and 41-A were received in evidence.)

Q Mrs. Fisher, Government's Exhibiy 42, can you

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identify that?

A Yes.

Q What is that?

A This is my canceled check from Freedom National Bank for a Negro history book that I bought.

Q 43, can you identify that?

A Yes. These are my canceled checks from Chase and also from Freedom National Bank for magazines that i bought.

Q 44, can you identify that?

A Yes. These are my canceled checks from Freedom National Bank for magazines that I bought.

MR. FEINBERG: Government offers 42, 43 and 44 in evidence.

MR. NAFTALIS: No objection to the checks for the magazines.

(Government's Exhibits 42, 43 and 44 were received in evidence.)

xx Q I show you 45 for identification.

Can you identify that?

A Yes. These are my canceled checks from Freedom National Bank to Leathercraft to process my leather coats that I have.

Q I show you 46, can you identify that?

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A This is my canceled check from Freedom National Bank to Sears Roebuck for the slipcovers that I bought.

MR. FEINBERG: Government offers 45, 45-A, 46 and 46-A.

MR. NAFTALIS: No objection.

(Government's Exhibits 45, 45-A, 46, 46-A were received in evidence.)

xx Q Mrs. Fisher, I show you Government's Exhibit 47. Can you identify those?

A Yes.

Q What are those?

A These are my canceled checks from Freedom National Bank to the Criminal Court for illegal parking.

Q These are tickets that you paid?

A Yes.

Q 48 for identification, can you identify that?

A These are my canceled check from Freedom National Bank for storage of my fur coats.

Q 49, can you identify these roughly?

A These are my canceled checks to different charities and magazines and miscellaneous.

Q These are miscellaneous checks?

A Yes.

Q Did you sign all these checks?

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A Yes, I did.

MR. FEINBERG: Government offers 47, 48 and 49 in evidence.

MR. NAFTALIS: No objection.

(Government's Exhhibits 47, 48 and 49 were received in evidence.)

xx Q Mrs. Fisher, I show you 50 for identification. Can you identify those?

A These are my canceled checks from Chase and also from Freedom National Bank for the the telephone.

Q Telephone bill?

A Telephone bill.

Q For the years 1967 through 1970?

A Right.

Q What about 51 for identification, can you identify that?

A This is my canceled check from Freedom National Bank to Mr. Kenneth Bruce for services rendered.

Q Who is Mr. Bruce?

A My lawyer.

Q Is that your signature?

A Yes.

Q 52 for identification, can you identify that?

A Yes.

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Q What is it?

A This is my canceled check from Freedom National Bank to Louis Snype, who is in the Synanon Organization out there in California.

Q Synanon?

A Yes.

Q Is that your signature?

A Yes.

MR. FEINBERG: The Government offers 50, 51 and 52.

MR. NAFTALIS: No objection to 50.

May I ask a couple of questions on voir on these?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q First let me show you Exhibit 51 for identification, Mrs. Fisher. In the upper left-hand corner there is some writing there it says"Re property matters and counseling in re property rights."

That is a check to your lawyer Kenneth Bruce. Is that your handwriting?

A No.

Q Do you know who put that on there?

A No, I don't.

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Q Was that on there when you gave it to the Government?

A Yes.

Q But that writing in the upper left-hand corner?

A It was not my handwriting, no.

Q Somebody put it on, that writing, after you gave it to the Government, this check?

MR. FEINBERG: I believe she just said that that writing was on when it came to the Government.

THE WITNESS: Yes. Whoever signed the check, endorsed the check, because it wasn't my writing that I put on there.

Q Let me see if I understand it correctly.

You wrote this check to Mr. Bruce?

A To Mr. Kenneth Bruce.

Q And in the upper left-hand corner, some writing about property rights and counseling and the like?

A Yes.

Q And that is not in your handwriting?

A No.

Q And you didn't put that on the check?

A No.

Q Was that on the check at the time you gave it to the Government?

A That, I don't know.

Q Does that look like Mr. Bruce's handwriting?

A It could be, or the secretary. I don't know.

Q You don't know anything about it?

A That is right. I just paid him the money.

THE COURT: In any event, you gave him that check for legal services?

MR. NAFTALIS: No objection to it.

(Government's Exhibits 50 and 51 were received in evidence.)

xx BY MR. NAFTALIS:

Q In this one, Government's Exhibit 52 for identification, there is no cross out there and the word "loan" appears to be crossed out?

A I don't know what it is.

Q That is a check to your nephew Louis Snype?

A Yes.

Q The fellow that is in Synanon?

A Yes.

Q Is this your handwriting that is crossed out?

A This is my handwriting. This check came from the houses, the checks that Mr. Singleton sent me.

Q What is the word?

A That is 555 West 142nd Street and also 636 West

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158th Street.

Q What is the language above it?

A That is care -- take part from one house and the other house which is that $147 each in order to make up that check'

Q The part that is crossed off seemed to originally say "loan". Is that your handwriting?

A i don't know. I may have started something then I changed it because right there you see "house".

Q You don't know anybody else who would cross off words that were written on your check besides yourself?

A That is right.

MR. NAFTALIS: No objection.

(Government's Exhibit 52 was received in evidence.)

xx BY MR. FEINBERG:

Q Finally, Mrs. Fisher, I show you Government's Exhibit 53.

Can you identify these?

A Yes. These are my canceled checks from Freedom National Bank and also from Chase for charities.

Q Did you sign those checks?

A Yes.

MR. FEINBERG: I offer 53 and 54 in evidence.

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MR. NAFTALIS: No objection.

(Government's Exhibits 53 and 54 were received in evidence.)

xx

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Q Mrs. Fisher, you testified that you reside at 2190 Madison Avenue, is that correct?

A Yes.

Q How long have you lived there?

A 25 years.

Q Did you live there with your former husband?

A Yes.

Q Before that, where did you live?

A At 1886 7th Avenue.

Q Who do you rent your apartment from at 2190 Madison Avenue?

A From the Metropolitan which is called the Riverton.

Q Metropolitan Life Insurance?

A Yes. The development is called the Riverton Development.

Q I show you Government's Exhibit 55 for identification and ask you if you can identify this.

A Yes.

Q What is this?

A This is the lease from the Riverton.

Q What is the date of this lease?

A First of May 1966.

Q Who are the parties named in the lease?

A Gilbert and Rosalie Fisher.

Q Is that your signature?

A Yes.

Thatis Mr. Fisher's signature.

MR. FEINBERG: The Government offers 55.

MR. NAFTALIS: No objection.

xx (Government's Exhibit 55 received in evidence.)

Q Concerning this lease, I show you Government's Exhibit 56 and ask you if you can identify that.

A Yes. These are my cancelled checks from Freedom National Bank to the Riverton for rental.

Q These are the checks by which you paid your rent for the apartment, is that correct?

A Yes.

Q Did you pay the rent every month?

A Yes.

MR. FEINBERG: The Government offers 56.

xx (Government Exhibit 56 received in evidence.)

Q I show you 57 for identification.

Can you identify that?

A This is a lease to the Riverbend Housing where I park my car, the 1969 Cadillac.

Q This is for parking?

A That's right.

Q Is that your signature?

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A That's my signature.

Q I show you 58 for identification and ask you if you can identify that.

A These are my cancelled checks from Freedom National Bank for parking at the Riverbend for the car.

MR. FEINBERG: The Government offers 57 and 58 in evidence.

MR.NAFTALIS: Your Honor, may we approach the bench?

THE COURT: Yes.

(At the bench).

MR. NAFTALIS: Your Honor,the Government has offered into evidence all varieties of checks drawn on this lady's account for the period 1967 through 1970 covering the whole garden variety of living expenses that anybody in the world could have, most of which are not direct payments for his benefit. In other words, there were some checks about his VA and health insurance but most of them are related to her living expenses, etc. during the period in which they separated.

I have not objected most of the time but I take it the Goverament is offering it on the theory that any dime that this lady spends is attributable to him because if they are not, then I don't see --

THE COURT: She said he authorized the payments, too.

MR. NAFTALIS: In other words, I take it they are claiming that this lady has no other source of income save which he gives to her and therefore it is attributable to him?

THE COURT: That's right.

MR. FEINBERG: I would add that on most of these exhibits it is co-signed by Mr. Fisher and these are joint returns. I point that out to the Court.

MR. NAFTALIS: I didn't say that. On some of them, like parking, it is clearly in her name and some are in his name, but on the lease, he is not living there.

I want to know what the Government's theory is.

MR. FEINBERG: It is an expenditures case.

THE COURT: She said he made the funds available to her. He authorized her to expend them.

MR. NAFTALIS: I take it she has testified to that effect and --

THE COURT: I don't understand your statement.

MR. NAFTALIS: I take it that were it not for Mrs. Fisher's testimony saying that the moneys she got were received, were from Mr. Fisher-- in other words, herexpenditures were based on moneys received from Mr. Fisher that

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would not have that connecting link - I don't think they culd put --

MR. FEINBERG: It is all moot. The evidence will show that by Mr. Fisher's own admissions she was working for him and he was the one that was the gambler and he provided the funds.

THE COURT: It is perfectly clear why this is being received.

(In open court.)

MR. NAFTALIS: I have no objection.

xx (Government's Exhibits 57 and 58 received in evidence.)

MR. FEINBERG: May I show 57 and 58 to the jury, your Honor?

THE COURT: Yes, you may. They are in evidence.

(Mr. Feinberg read to the jury from Government's Exhibits 57 and 58.)

MR. NAFTALIS: I should inform the jury that on a note placed on 57 only Mr. Fisher's signature appears.

THE COURT: And I understand that is what Mr. Feinberg said. In other words, the exhibit speaks for itself.

Q Mrs. Fisher, I show you first Government's Exhibit 59 and ask you if you can identify these.

A These are my cancelled checks from Freedom and also from Chase to Axelrod, where I kept my 1967 small car for parking.

Q These are checks for--

A Cancelled checks.

Q For parking space renting?

A Yes.

Q To Axelrod?

A Yes.

Q Did you sign all these checks?

A Yes.

MR. FEINBERG: The Government offers 59 and 59A.

(Pause.)

MR. NAFTALIS: Your Honor, there is no objection.

With regard to 59A, could you withhold a ruling on this offer?

If I could talk to Mr. Feinberg about this, I think we could probably arrange this without any problem.

xx (Government Exhibit 59 received in evidence.)

Q As to 59, the checks to Axelrod Management, who was the parking space rented to, Mrs. Fisher?

A What year?

Q During this period, 1967 through 1970.

A To Gilbert Fisher and --

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Q And also to you?

A Rosalie Fisher.

Q Both of you?

A Both of us.

Q You testified that you had mortgages on your two properties, is that correct?

A Yes.

Q Did you make monthly payments on these mortgages?

A Yes.

Q First as to the house,511 West 142nd Street, let me show you Government's Exhibit 60.

I show you Government's Exhibit 60 and ask you if you can identify those checks.

A Yes. These are my cancelled checks to Mr. Dilbert Phillips for the mortgage and also to Mrs. Josephine Greenidge for the mortgage for 636.

Q Are there any checks there that I have showed you as part of Government Exhibit 60 to Josephine Greenidge or are these just to Phillips?

A These are to Dilbert Phillips.

Q Did you sign all these checks?

A Yes.

Q Is this for the mortgage on the house at 511 West 142nd Street?

A Yes.

Q Did you make these payments periodically?

A Yes.

Q How often did you make the payments?

A Once a month.

Q And did you also make the payments?

A Yes.

MR.FEINBERG: The Government offers Exhibit 60.

I also offer Government's Exhibit 60A.

MR.NAFTALIS: I have no objection to 60.

xx (Government's Exhibit 60 received in evidence.)

MR. FEINBERG: The Government withdraws 60A, your Honor.

Q Mrs. Fisher, I show you Government's Exhibit 61 first.

Can you identify 61?

A Yes. These are my cancelled checks to Carver Federal Bank for the mortgage on 636 West 158th Street.

Q Are these checks all signed by you?

A Yes.

Q Are these checks payment for the mortgage with Carver?

A Yes.

Q Did you make payments periodically on this mortgage?

A Monthly.

Q I show you 61A and ask you if you can identify these.

A Yes. This is the mortgage statement and records from Carver's.

Q And this is the statement for which you wrote out these checks, is that correct?

A Right.

MR. FEINBERG: The Government offers 61 and 61A in evidence.

MR. NAFTALIS: No objection.

xx (Government's Exhibits 61 and 61A received in evidence.)

Q Mrs. Fisher, I show you 62 for identification. Can you identify those?

A Yes. These are my cancelled checks from Freedom National Bank to Mrs. Josephine Greenidge for the second mortgage on 636 West 158th Street.

Q Did you make all the payments for that mortgage?

A Yes.

Q Did you pay in full?

A No. Monthly.

Q Did you make all the payments that were required?

A Yes.

MR. FEINBERG: The Government offers 62 and 62A in evidence.

(Pause.)

MR.NAFTALIS: No objection.

xx (Government's Exhibits 62 and 62A received in evidence.)

Q Mrs. Fisher, you testified you rented a safe deposit box at the Manufacturers Hanover Trust, is that correct?

A Yes.

Q I show you Government's Exhibit 63 and ask you if you can identify that.

A Yes. This is my cancelled check from Freedom National Bank to Manufacturers Trust Hanover for the rental on the box.

Q For what date?

A 1970.

Q What is the amount?

A $37.10

MR. FEINBERG: The Government offers 63.

MR. NAFTALIS: No objection.

xx (Government's Exhibit 63 received in evidence.)

Q Mrs. Fisher, from 1967 through 1970, did you file federal income tax returns with the United States Government?

A Yes.

Q What type of returns did you file?

A It was a joint return.

Q In 1970, did you file any other returns?

A Yes. An individual return for Rosalie Fisher.

Q In 1967, 1968, and 1969, aside from the joint returns, did you file any other returns?

A The state and also the city.

Q What about federal?

A Federal.

Q What type?

A A joint return.

Q Beside that.

A Individual.

Q Did you file a corporate return in 1967, 1968 and 1969?

A For the Esplanade Garage, yes.

Q Ad to the joint returns, 1 through 4 in evidence, did you sign those returns?

A Yes.

Q Did you sign anybody else's name on those returns?

A I signed Rosalie Fisher and also Gilbert Fisher.

Q Did you sign your husband's name in his presence?

A Yes.

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Q Did you ever have a conversation with your husband about signing his name?

A Yes.

Q When?

A In the home.

Q Where?

A 2190 Madison Avenue.

Q I want to know when.

A 1967, 1968 and also 1969.

Q What was said at those conversations?

A Well, during that period of time, when the tax return time comes around, we discuss income tax returns together and then Mr. Singleton will come up on a Sunday.

Q Who is he?

A My manager and also my accountant. When we both are home on Sunday, he comes up.

Q Did you have a conversation with your husband, Mr. Fisher, about signing his name on the returns?

A Yes.

Q What was the conversation?

MR. NAFTALIS: Can we have a time and place and who else if anyone else in the world was present beside these two?

Q When did you have a conversationwith your husband

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about signing his name?

A When Mr. John Singleton came to the house with the forms.

Q Just in 1967 or in the other years as well?

A From 1967 through to 1968 and 1969.

Q Who was present beside you and your husband?

A Rosalie, Gilbert, and John Singleton.

Q Just as to the fact of your signing your husband's name, what was the conversation?

A "That Rosalie will take care of the business and she will sing my name."

Q Who said that?

A Mr. Fisher.

Q What did you say?

A I said, "Okay."

MR. NAFTALIS: Did the same conversationoccur in each of the three years?

THE WITNESS: Yes.

Q Did you know whether it was proper or not for you to sign your husband's name?

A That's the agreement that we had from the time I married Mr. Fisher, that I was always signing his name and he also signed my name. I didn't do anything wrong.

THE COURT: Mr. Naftalis, you know better than that.

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MR. NAFTALIS: I apologize. You are right. I apologize to the Court.

Q Did you know,Mrs. Fisher, what the Internal Revenue would say about your--

MR. NAFTALIS: I object to this. These are all argumentative.

MR. FEINBERG: Withdrawn.

THE COURT: Objection sustained.

Q Mrs. Fisher, when you went over the returns, was your husband present?

A Yes. We both went over it together.

Q Did you go over it together with Mr. Singleton?

A Yes.

Q What did you tell Mr. Singleton as to your sources of income?

MR. NAFTALIS: I object, your Honor, unless he is going to distinguish between year to year and unless the witness is going to testify it was the same converstaion in every year --

THE COURT: Sustained.

Q Directing your attention to 1967, what did you tell Mr. Singleton about your sources of income?

A From 1967 to 1970 the sources from the two houses, the money that Mr. Fisher gave me, and from the garage.

Q Did you tell Mr. Singleton about gambling income?

A No.

Q Did Mr. Fisher tell Mr. Singleton about gambling income in your presence?

A Not to my knowledge.

Q In 1970, Mrs. Fisher, you have testified that you filed a separate return, is that right?

A That's right.

Q That is in addition to the joint return?

A Yes.

Q What were the circumstances as to why you filed the separate return in 1970?

A Because Mr. Fisher had the Bernice Variety Store on 7th Avenue and he was not giving me any support in 1970.

Q Did you have any connection with Bernice's Variety Store?

A No.

Q Mrs. Fisher, to the best of your knowledge, how did Mr. Singleton go about preparing the joint returns? What was the procedure?

Let me ask you this: Was the procedure for preparing a return the same in 1967, 1968 and 1969?

A Yes.

Q What was that procedure?

A When Mr. Singleton comes to the house in 1968, -- 1967, 1968 and 1969, I usually go and get all the bills for each and every year and then Mr. Singleton will take his pad and jot down just how much I spent for each and every year.

Q You met with Mr. Singleton?

A No. Mr. Singleton will take what receipts and take it to his office. Then by the time I receive my tax return at my home, which is 2190, then he will come and get that and fill in the answers.

Q Did you sit down with Mr. Singleton and discuss the return?

A Yes.

Q Was anybody else present?

A Mr. Fisher.

Q Did Mr. Fisher, to the best of your knowledge, ever say anything to Mr. Singleton?

MR. NAFTALIS: Objection, your Honor.

Q In 1967 -

MR.NAFTALIS: Objection. She can testify if there were any conversations. I don't think he should lead.

THE COURT: Specify the subject matter. It is a pretty broad question.

Q In 1967, did Mr. Fisher state anything to Mr. Singleton concerning his sources of income?

A Mr. Fisher stated to Mr.Singleton that Rosalie will take care of --

Q Who was in the room when he said that?

A Rosalie, John Singleton and Gilbert Fisher.

THE COURT: When you speak of Rosalie, you are speaking of--

THE WITNESS: Of myself.

Q When Mr. Singleton gave back the returns for 1967, 1968 and 1969, did you examine the return?

A Yes.

Q Did Mr. Fisher examine the return in your presence?

A Yes.

Q After the returns were completed, what did you do?

A After the returns were completed, and then the amount of money that I owe the Government, I usually send half of that money.

Q How did you send it?

A By a check, and the balance whenever they sent me the notice for the balance.

Q Did you pay the full amount?

A Yes.

Q I show you Government's Exhibit 64 for identification

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and I ask you if you can identify that.

A Yes.

This is my cancelled check from Freedom National Bank to the IRS.

Q Are all of these to the IRS?

A Yes.

Q Are those your signatures?

A Yes.

Q Is that for the tax due and owing?

A That's right.

Q Did you discuss the sending of these checks with your husband?

A Yes.

Q What did he say?

A "Pay those people."

MR. FEINBERG: The Government offers Exhibit 64.

(Pause.)

MR. NAFTALIS: No objection.

Q Did you pay any state income tax during these years?

A Yes.

Q I show you Government Exhibit 66 and ask you if you can identify those.

xx

(Government's Exhibit 64 received in evidence.)

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A These are my cancelled checks from Freedom National Bank to the State Tax Bureau.

Q For state taxes?

A Yes, for state taxes.

Q Is that your signature on these checks?

A Yes.

Q Did you pay any city tax?

A Yes.

Q I show you Government's Exhibit 67 for identification.

Can you identify those?

A These are my cancelled checks to the city from Chase Manhattan Bank and also from Freedom to City Tax payment.

Q Thatis for city tax payment?

A Yes.

MR. FEINBERG: The Government offers 66 and 67 in evidence.

(Pause.)

MR. NAFTALIS: No objection.

xx (Government's Exhibits 66 and 67 received in evidence.)

Q Mrs. Fisher, do you know firsthand Mr. Fisher's parents?

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A Yes.

Q Whatis Mr. Fisher's father's name?

A Gilbert Fisher, Senior.

Q How old is he?

A 88.

Q Is he living or dead?

A He is dead.

Q Do you know Mr. Fisher's mother?

A Yes.

Q How old is she?

A 80.

Q Is she living or dead?

A Living.

Q During the period from 1967 through 1970, do you know from your own personal knowledge whether or not Mr. Fisher's mother and father were working, were employed?

A No.

Q No, you don't know?

A No, I don't know.

Q From your own personal knowledge, Mrs. Fisher, do you know if Gilbert Fisher's father was ever in the gambling business?

A No, not to my knowledge.

Q Prior to 1967, do you know what Mr. Fisher did for

a living, Mr. Fisher, Sr.?

A He was not doing anything, to my knowledge.

Q What about Mrs. Fisher?

A Nothing.

MR. FEINBERG: No further questions, your Honor.

MR. NAFTALIS: May we approach the bench?

THE COURT: Yes.

(At the bench.)

MR. NAFTALIS: Your Honor, until what our is it your Honor's pleasure to sit today?

THE COURT: A little after five.

MR.NAFTALIS: I assumed 4:30. I have an appointment uptown.

THE COURT: You know the hours I set. Those are my usual hours.

MR. NAFTALIS: Would your Honor consider putting over the beginning of the cross until tomorrow?

THE COURT: You don't want to sit tomorrow.

If you want to sit tomorrow, I will agree to it.

Start. We will sit until five o'clock and come back Wednesday.

Don't repeat what you ask tonight or this afternoon.

MR. NAFTALIS: I will try not to.

The second thing, your Honor, Mr. Feinberg was gracious enough to supply me with 3500 material in this case consisting of the grand jury testimony of this woman and three reports, I believe, by certain IRS agents.

I made an inquiry of Mr. Feinberg, I guess it was on Friday, and asked him whether or not there were any handwritten notes of agents of any interviews of the witness.

It is my experience and my recollection in trying cases for the Government that the agents, prior to typing up the final report, make handwritten notes of their interviews.

These are often kept in something which I understand is called the inter-confidential file, or something of that sort, and I made a request to Mr. Feinberg for production.

Mr. Feinberg indicated he didn't know at that time whether they existed and didn't know what his position would be as to whether or not they came within the ambit of 3500.

In addition, your Honor, if there are any handwritten notes taken by any Assistant U. S. Attorneys or IRS agents in connection with the preparation for the grand jury appearance of this woman, I would respectfully request,

under Section3500, I would be entitled to those also.

THE COURT: That depends on whether or not they are statements coming within the purview of 3500.

MR. NAFTALIS: I agree. Verbatim or substantially verbatim.

MR. FEINBERG: Our position is two-fold. First of all, we don't think the agents' handwritten notes prior to the making of a report are 3500 material.

In any event, there are no handwritten notes of any agent in this case.

As far as any notes of any AUSA prior to the grand jury appearance, this is the first I have heard of that. I think Mr. Naftalis will agree. I don't believe there are but there may be and I will check right after five o'clock.

THE COURT: If there are any that come within 3500 you will produce them.

MR. NAFTALIS: I take it Mr. Feinberg has none for himself for trial purposes?

MR. FEINBERG: None.

MR. NAFTALIS: Thank you.

(In open court.)

CROSS-EXAMINATION

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BY MR. NAFTALIS:

Q Mrs. Fisher, I don't think we have ever met prior to today, have we?

A No.

Q If you don't understand any question I ask you, please ask to have it repeated.

A Yes.

Q If you can, to the extent you are able to, try to answer some of the questions yes or no.

A Yes.

Q My voice sometimes drops. If you can't hear it, ask to have it repeated.

A Yes.

Q Mrs. Fisher, prior to testifying here today, you discussed your testimony, had you not, with officials of the Government?

A Today?

Q Prior to coming down here today, haven't you discussed your testimony with anyone connected with the Government?

A No.

Q So you deny you ever have?

A Before. Not today. You asked me for today.

Q I didn't mean to confuse you. Prior to testifying

today, Mrs. Fisher, have you ever discussed your testimony with any agents or officers of the Government?

A Yes.

Q You have done that on a number of occasions, isn't that right?

A Yes.

Q You have talked to the Internal Revenue Agents on three or more occasions, isn't that right?

A Yes.

Q How many times did you talk to them before you testified today?

A Well, they came to the house at 2190 Madison Avenue.

Q A couple of times?

A Yes.

Q You went down to their place and talked to them?

A Yes.

Q You have talked to them since that time. This agent here you talked to,haven't you (indicating)?

A Yes.

Q And another agent, Agent Spadola?

A Yes. Two agents.

Q And Mr. Bruh, Brian Bruh, do you remember talking to him?

A No, I don't remember that name.

Q And Steven Jones?

A Jones, yes.

Q You have also talked, have you not, with Mr. Feinberg? You discussed your testimony with him?

A I discussed the facts with Mr. Feinberg, yes.

Q The otherpeople you discussed your testimony with --

A The questions they asked me and what I know.

Q How many times have you talked to Mr. Feinberg?

A A couple of times.

Q When was the last time you discussed your testimony with Mr. Feinberg before today?

A I didn't discuss nothing with Mr. Feinberg.

Q Before today?

A Last month, in September.

Q Between September and today, you have never had any conversations with Mr. Feinberg about your testimony, is that correct?

A In September I did, but not today.

Q Since September and up to -and including today, is it your testimony that you have never had any conversations whatsoever with Mr. Feinberg about your testimony?

A No. In September. But not today.

Q That was the last time you spoke to Mr. Feinberg?

A That's right. In September.

Q How many hours did you spend with Mr. Feinberg before you went on the stand?

A I didn't time myself.

Q You don't have any recollection?

A No, I didn't time it.

Q Was it a whole day?

A No, it was not.

Q Half a day each time?

A It could have been half a day but I didnn't time myself.

Q You also spoke to Mr. Rakoff, didn't you, another Assistant United States Attorney?

A Mr. Rakoff was from the District Attorney that called me down.

Q How many times did you speak with Mr. Rakoff?

A The day that I had to go down there. I didn't even know him.

Q You have testified, have you not, in a prior proceeding against Mr. Fisher in this case, --

A Pardon me?

Q In September, isn't it a fact that you testified in a prior proceeding against Mr. Fisher?

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A Preceding what? You mean the case?

Q Yes.

A They asked me the same questions they have been asking me, yes.

Q After you left the stand in that case against Gilbert Fisher here, didn't you have a conversation with Mr. Feinberg?

A Well, I usually stop there to find out what time I am supposed to return the next day.

Q During that conversation, he pointed out to you, did he not, that you had made mistakes in your testimony?

A Not to my knowledge.

Q Do you remember being questioned later in that trial after you finished testifying for Mr. Feinberg and being asked these questions and giving these answers:

"Q Did Mr. Feinberg discuss with you your testimony you have given in court?

"A Mr. Feinberg discussed with me the facts.

"Q I say, did he go over the testimony you had given in court?

"A Yes, the facts.

"Q The facts?

"A Yes.

"Q And did he point out any mistakes you had made in

your testimony?

"A Yes."

Do you recall being asked those questions and giving those answers?

A Like I said, the facts of the case.

Q Do you recall being asked the question:

"Q Did he point out any mistakes you had made in your testimony?"

And you answered "Yes."

A Yes, the facts.

Q Do you recall also that during your conversation with Mr. Feinberg, after you finished testifying for him the first time against Mr. Fisher, that he told you that the facts were different than what you had testified to?

A Not to my knowledge.

Q Do you recall later in that trial being asked this question and giving this answer:

"Q He" (referring to Mr. Feinberg) "said the facts were different?

"A Right."

Do you recall being asked that question and giving that answer?

MR. FEINBERG: May I have the page, please?

MR. NAFTALIS: 177.

(Pause)

Q May I refresh your memory by showing you the transcript? Lines 22 and 23 (indicating).

Does that refresh your memory that those questions and answers were asked and given?

A Yes.

Q Thank you.

A Thank you.

Q Do you also recall that during this conversation you had with Mr. Feinberg, after you finished testifying the first time against Gilbert Fisher, Mr. Feinberg told you that you had made different statements in the past than what you had given on the stand? Isn't that right?

A Yes.

Q You testified on your direct examination about various places, various sources, that you and Gilbert Fisher got money from, is that right?

A Yes.

Q You mentioned the Esplanade Garage, and a number of others?

A The two houses, right.

Q And amongst the things you testified to was the fact that from the year 1960 through 1969, you and Gilbert Fisher received money from numbers, is that right?

A Yes.

Q And that, as far as you know, was the truth?

A Yes.

Q When you testified, Mrs. Fisher, before a federal grand jury, isn't it a fact that you didn't tell them about the numbers during that period?

A That's right.

Q So that was a lie?

MR. FEINBERG: I object to that. There is no testimony here the question was asked.

THE COURT: Objection sustained.

Q I read you the question:

"Q And directing your attention first to the period about 1954 to about 1965, is it correct that the only source of income that you and your husband had during that period were a number of small fish and chips restaurants which you were operating in the Harlem area together with Lulu Fisher, who was Gilbert Fisher's mother, and Janey Foy, who was Gilbert's aunt?

"A Right."

That's EJC-2.

Do you remember giving that answer to that question?

A Yes.

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Q You didn't tell them that during this period of time through 1965 you were getting income from numbers?

A No. I did not tell them because they did not ask me that.

Q They didn't ask you that?

A No.

Q Let me repeat the question again to you.

Directing your attention first to the period from about 1954 to about 1965, there is no question between 1960 and 1965, you were getting money for numbers, right?

A Right.

Q Is it correct that the only source of income that you and your husband had during the period were a number of small fish and chip restaurants which operated in the Harlem area together with Lulu Fisher, who was Gil Fisher's mother, and Janey Foy, Gils' aunt?

A Right. Yes.

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Q Isn't it a fact that during the period 1960 through 1965 that wasn't your only source of income as you testified, you also had income from numbers, isn't that right?

A Numbers, yes.

Q And you didn't disclose it to the grand jury?

A The grand jury didn't ask me.

Q By the way, Mrs. Fisher, at the time that you went down tc the grand jury, that was that fellow Rakoff you testified before?

A Yes.

Q At the beginning of the testifying, Mr. Rakoff told you "Finally, let me advise you you are under oath and anything you say which is not the truth could subject you to punishment for perjury. Do you understand that?

"A Right."

You remember him warning you about perjury?

A Yes.

Q You know what perjury is, don't you?

A Yes.

Q That is lying under oath?

A Right.

Q And that is serious business, isn't it?

A Yes.

Q I take it that you have not been prosecuted for perjury based on any testimony you gave before that grand jury, is that right?

A No, I haven't.

Q And you have not been prosecuted for perjury based upon the question and answer which I just to you?

A No, I haven't.

Q And I take it you don't expect to be prosecuted by Mr. Feinberg or any of his staff for perjury based on any testimony that you gave before the grand jury?

A During that period to the grand jury I was a little bit nervous for the first time, so we all make mistakes at the first time.

Q That wasn't the first time that you didn't tell anybody when you were asked or made a statement under oath about what your income was and covering a period between 1960 and 1965, was it?

A Well, it all depends on the question that they asked me and I gave the answers.

Q Mrs. Fisher, do you remember before you went to the grand jury, you talked to some agents, agents of the Internal Revenue Service, do you remember that?

A Yes.

Q Lots of times you talked to them?

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A Not lots of times.

Q How many times?

A They came to my home about twice and I only came down to Church Street I think about once.

Q When you went down to Church Street which is before you went to the grand jury, you signed an affidavit under oath, didn't you?

A Affidavit? Not to my knowledge.

Q You deny that you signed an affidavit under oath to the Internal Revenue Service?

A Not to my knowledge.

Q It didn't happen, did it?

A No.

Q And it is a phony if it happened?

A It could be.

Q Let me show you 3506 for identification a two-page affidavit and ask you if this is your signature on it?

A There is my signature, yes.

Q This document says "Affidavit" on the top?

A Oh, yes. Like I said, not to my knowledge.

Q And in that affidavit, you made the same false statement that you made before the grand jury where you said that the only source of income you had during this period was from the fish and chips restaurant, isn't that so?

A During the period of the time we had the fish and chips restaurant and from the restaurant to the two houses to the Esplanade Garage. That is what I answered.

Q But you had numbers income, didn't you?

A They didn't ask me about numbers.

Q No one asked you this? This is a document that you yourself signed?

A Right.

Q You read it, didn't you before you signed it?

A I guess I did.

Q It says at the bottom right above your signature, does it not:

"I have read the foregoing statement consisting of two pages, each of which I have signed,"

and your signature appears on both pages?

A Right.

Q As a matter of fact, you even crossed out things that were in that affidavit, didn't you?

A No, I didn't. I just put my signature right here on the side.

Q Isn't there something crossed out and your initials next to it?

A My initials is next to it but I didn't put no crossing out.

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Q You approved of it?

A Yes.

Q Didn't you also say right at the time you signed this that:

"I fully understand this statement and it is true and accurate and complete to the best of my knowledge and belief."

Did you say that?

A Yes.

Q And:

"That I made the corrections shown and placed my initials opposite each."

A Yes.

Q So you actually made the corrections?

A Like I said, I didn't remember.

Q And you make this statement freely and voluntarily?

A No threats.

Q These gentlemen wouldn't threaten you?

A No.

Q They didn't give you any rewards, promises?

A No.

Q And you swore to it?

A Yes.

Q Subscribed and sworn to and one of the agents,

Mr. Bolger, this fellow right over here?

A Yes.

Q And you know it is a crime to lie under oath, don't you?

A Yes.

Q And it wasn't the truth, was it, that your only source of income during the period through 1965 was fish and chips restaurants?

A No, it wasn't.

Q Because you had numbers also?

A Numbers.

Q So this was a lie?

A Right.

Q I take it that you haven't been prosecuted for making false sworn statements under oath to a Federal officer, have you, for this?

A Like I said, I was nervous at the time so instead of saving yes, I made a mistake.

Q Where does it say "Yes" on here?

A That I signed my name.

Q You read this, didn't you?

A Yes.

Q So on two separate occasions you said the same thing which wasn't true under oath?

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A The same thing they asked me.

Q And I take it it is fair and honest to say that for neither false swearing under oath by you, have you ever been prosecuted?

A For what?

Q For perjury?

A No.

Q You don't expect to be, do you?

A I don't know what is going to happen.

Q No one ever told you they are going to do it, have they?

A I don't know.

MR. NAFTALIS: Would this be a convenient time to break?

THE COURT: All right.

Please do not go over the questioning you just put to this witness when we begin again.

MR. NAFTALIS: I certainly won't.

THE COURT: Members of the jury, we will take our adjournment and I originally planned to sit tomorrow but I suppose it is good news to you we won't sit because of certain reasons, and I will ask you to please be in the jury room Wednesday morning in time to start promptly at 10 o'clock. You all have a good day tomorrow. Good night.

(Adjourned to Wednesday, November 6, 1974; at 10.00 o'clock a.m.)

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UNITED STATES OF AMERICA

v. 74 Cr. 388

GILBERT FISHER, a/k/a
GILBERT FISHER, Jr.,

November 6, 1974
10 A. M.

(Trial resumed.)

(Jury in box.)

THE COURT: Good morning all.

I see we are short two jurors.

I will have to ask the jurors to get here on time. I should not say that to you because you are here on time; I should say that to the jurors who are absent.

(Pause.)

(Juror number 8 took his place in the jury box.)

THE COURT: I have to ask the jurors to please come on time. You are 10 minutes late. I have an extremely heavy day with other matters.

(Pause.)

(Juror number 10 took his place in the jury box.)

THE COURT: I have to ask you to please get here on time.

JUROR NUMBER 10: I am sorry, your Honor.

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THE COURT: We have been held up for 15 minutes.

Please proceed.

R O S A L I E F I SH E R, resumed.

MR. NAFTALIS: Your Honor, the last time I objected to Government Exhibit 27 your Honor sustained the objection. I informed Mr. Feinberg last night that I would withdraw the objection and he can offer the exhibit.

MR. FEINBERG: I re-offer that exhibit.

XXX (Government Exhibit 27 received in evidence.)

THE COURT: You may proceed.

CONTINUED CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good morning, Mrs. Fisher.

A Good morning.

Q Once again, if you don't understand the question I ask you --

THE COURT: Don't spend time on that. You started that the other day. Can't we move along now?

Put your questions, please.

MR. NAFTALIS: Yes, your Honor.

Q Do you know a man by the name of John Singleton?

A Yes.

Q John Singleton is an accountant, isn't he?

A Yes.

Q You know him ever since he was a school child in Charleston, South Carolina?

A Yes.

Q You renewed your acquaintanceship with Mr. Singleton after you came to New York and he came to New York; is that right?

A Yes.

Q Mr. Singleton is the fellow who prepared the income tax returns for 1967, 1968, 1969, and 1970, which are exhibits 1 through 4 in this case?

A Yes.

Q He also prepared, did he not, the tax returns of the garage which you owned, the Esplanade Garage?

A Yes.

Q In addition, hasn't he worked for you collecting rents on rooming houses about which you have testified here?

A Yes.

Q I want to direct your attention, Mrs. Fisher, to a time around 1971 when the Internal Revenue Service got in contact with either you or Mr. Singleton and raised some questions about those income tax returns?

A Yes.

Q As a result of the questioning by the Internal Revenue Service, you became upset, is that right?

A Yes.

Q One of the items which you were being questioned about was whether or not you had actually had certain loans from your mother; is that right?

A Yes.

Q You then went, did you not, and chatted with Mr. Singleton about this?

A Yes.

Q Mr. Singleton said you had better go out and come up with some sort of document or piece of paper to back up your story?

A No. He didn't say it like that.

Q Did he say you should go out and get a document to support this claim of yours? Yes or no?

A Yes.

Q Let me show you Government Exhibit 29 in evidence. Is this a document you had made up pursuant to your conversations with Mr. Singleton?

A This is the agreement from my mother of the loan that she loaned us.

Q Was this document made up in 1971 after you and Mr. Singleton had a conversation about the necessity of getting the document to substantiate your claim?

A No. This document was notarized in 1971.

Q Is it your testimony that that document was not prepared in 1971?

A It was notarized in 1971. The document was made in 1967.

Q When was the document signed?

A 1971.

Q Isn't it a fact that the document was made up in 1971 and prepared by Mr. Singleton then? Yes or no?

A This document was signed and it was made up in 1971 in North Carolina where I had a notary public there, and I signed it then because before my mother forget to give me the original.

Q So the document was prepared in 1971; is that correct?

A Yes.

Q It was prepared, was it not, by Mr. Singleton?

A Yes.

Q This document, which was prepared in 1971, has the date of May 3, 1967 on the top; is that right?

A That's right.

Q And even though it has the date of May 3, 1967 on the top, it refers to transactions in 1968 and 1969; is that correct?

A It refers to payments from 1967 to 1969.

Q 1968 and 1969?

A Yes.

MR. NAFTALIS: May I pass this to the jury, your Honor?

THE COURT: Yes.

(Government Exhibit 29 in evidence was passed to the jury.)

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THE COURT: Proceed, won't you?

BY MR. NAFTALIS:

Q Mrs. Fisher, before you-- let me see if I understand this correctly.

Before you signed a tax return, any of the tax returns, you checked them over carefully, didn't you?

A We both checked them over carefully.

Q I am not asking about both. You can throw that stuff in later.

I am asking you about yourself.

A Yes.

Q Mr. Singleton, I think you said, is the one who prepared the return, right?

A Yes.

Q You are the one, are you not, who gave Mr.Singleton or gives Mr. Singleton the figures from which he makes up the return?

A Yes.

Q Now, Ma'am, I would like to show you-- I would like to direct your attention now to 1967, okay?

A Yes.

Q Now, you had this big, I think you called it, a spacious parking garage that you owned, the Esplanade Garage?

A Yes.

Q Did you receive any salaries or wages from the Esplanade Garage in 1967?

A Yes.

Q Did Gilbert Fisher receive any salaries or wages from the Esplanade Garage in 1967?

A Yes.

Q Do you recall when you were interviewed by the Internal Revenue Service on October 4, 1972, when you were interviewed by Agent Spadola and Agent Bruh at your home; do you remember that you told them that neither you nor Gilbert Fisher received any salary income during 1967?

A Not to my knowledge.

Q You deny that you told them that?

A That is right.

Q Let me see if I can refresh your recollection.

I show you what has been marked as Exhibit 3505 and I direct your attention to the memorandum of conference dated October 4, 1972; at page 3, Mr. Feinberg. The first full paragraph there, the first sentence.

Does that refresh your recollection?

A Yes.

Q So, in fact, you told the agents when you were first interviewed that you and Mr. Fisher did not receive any salary income for 1967, is that correct?

A That is right.

Q That wasn't the truth, was it?

A Well, the place--

Q That wasn't the truth?

A No.

Q Because you got income from the Esplanade Garage, is that correct?

A Not exactly.

Q Did you or did you not receive --

A The Esplanade Garage started operating in 1967.

Q My question, Madam, is this: You told the agents that during 1967 you and Gilbert Fisher received no salaries, is that correct?

A Yes.

Q Earlier today you testified that during 1967 you did receive salaries from the Esplanade Garage, is that not correct?

A That is right.

Q So when you were first interviewed by the agents and gave that answer, that wasn't the truth, isn't that correct?

A Yes.

Q I take it that you sitting here today have not been prosecuted by the United States of America for giving a false statement to a federal agent, have you?

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A Not to my knowledge.

Q Let me show you Exhibit 13, Madam.

Why don't you look at that for a moment?

A Yes.

Q In that document, Exhibit 13, that is a document that is filed with the Government, isn't it, which lists the employees and the officers of the Esplanade Garage during 1967 through 1969, and the salaries they received; is that right?

A Yes.

Q That shows, does it not, on the first four pages, I believe it is, the salaries that you received and that Gilbert Fisher received, is that correct?

A Yes.

Q That indicates, doesn't it, that, if you accept my addition, that between the two of you, you received some $7,000 from the Esplanade Garage, is that correct?

A Yes.

Q Now, that document was prepared, was it not, Government Exhibit 13, by Mr. Singleton, your accountant, is that right?

A Yes.

Q I want to show you Government Exhibit 7. This is the tax return, isn't it, for the Esplanade Garage for the

year 1967, is that correct?

A Yes.

Q And I notice on the bottom it is signed by yourself as the president, is that correct?

A Yes.

Q And the only other signature other than yours on this document is the signature of your accountant, John L. Singleton, signing as the preparer, is that correct?

A Yes.

Q There is no signature of Gilbert Fisher on this return, isn't that right?

A No, it is not on there.

Q The answer is no?

A No.

Q I direct your attention -- when you signed this return, you signed this return, you and Mr. Singleton, the two of you, signed this return under penalties of perjury, is that correct? Is that what it says there?

A That is what it says.

Q It says: "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete."

That is what it says, is that right?

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A Yes.

Q You indicated earlier that you checked the returns carefully?

A Right.

Q I direct your attention to the second page, Madam, where it says "Schedule E, Compensation of Officers," listing Rosalie Fisher and Gilbert Fisher, is that correct?

A Yes.

Q You are the president?

A Right.

Q He is the vice president?

A Right.

Q This indicates that neither one of you received any compensation from the Esplanade Garage, isn't that right?

A Right.

Q As a matter of fact, as you have testified on the stand and Exhibit 13 shows the two of you received some $7,000, isn't that correct --

A Yes.

Q So the statement that you swore to and Mr. Singleton sworn to under pains and penalties of perjury that you and Mr. Fisher received no compensation from the Esplanade Garage for the year 1967 was false, is that correct?

A Yes.

Q I take it it is fair and honest to say that you have not been prosecuted for perjury in connection with this federal income tax return, is that right?

A Yes.

Q You have been?

A No.

Q You have not been?

A No.

Q I want to show you Government Exhibit 1 in evidence and this is your 1967 income tax return for Gilbert and Rosalie Fisher, is that correct?

A Yes.

Q And go down to the bottom on this one and we see that you signed it, is that correct?

A Yes.

Q And then you signed Gilbert Fisher's name, isn't that correct? Yes or no?

A Yes.

Q We also see that the signature of the preparer, other than the taxpayer, is John L. Singleton again?

A Yes.

Q Once again, when you signed it and Mr. Singleton signed it, the only two people who signed the return, you signed it under penalties of perjury, is that correct?

A Yes, sir.

Q It says; "I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete." Is that right?

A Yes.

Q I think in 1967 it is clear that you and Mr. Fisher received wates and salaries from the Esplanade Garage, is that right?

A Yes.

Q I want to direct your attention to line 5 on page 1 where it says "Income from wages, salaries, tips, et cetera. None reported."

Is that right?

A Right.

Q Thatis inaccurate?

A No, it is not.

Q As a matter of fact, it is false?

A No, it is not false because I don't prepare the income tax forms, you know. That is why I had Mr. Singleton to do it for me.

Q I take it Mr. Singleton is responsible for the false statement that is contained in Exhibit 1?

MR. FEINBERG: I will object to that question.

THE COURT: Sustained.

Q Mr. Singleton, not yourself, is that your testimony, is responsible for the failure to state the wages that you and Mr. Fisher received during the year 1967 on this tax return?

MR. FEINBERG: I will object to the question.

THE COURT: Sustained as to form.

MR. NAFTALIS: May I mark some exhibits.

Mark this as Defendant's Exhibit A.

xx (Defendant's Exhibit A marked for identification.)

MR. NAFTALIS: Defendant's Exhibit B for identification.

xx (Defendant's Exhibit B marked for identification.)

MR. NAFTALIS: Defendant's Exhibit C for identification.

xx (Defendant's Exhibit C marked for identification.)

MR. NAFTALIS: Defendant's Exhibit D for identification.

(Defendant's Exhibit D marked for identification.)

MR. NAFTALIS: Defendant's Exhibit E for identification.

xx (Defendant's Exhibit E marked for identification.)

-3-1

Q Mrs. Fisher, I want to show you Government Exhibit 9 in evidence. This is the Esplanade Garage tax return for the year 1969; is that right?

A Yes.

Q This one was signed in 1970, right?

A Yes.

Q Once again, the only signatures are yours and your friend, Mr. Singleton; is that right?

A Rosalie Fisher.

Q And John Singleton?

A Yes.

Q He signed as the preparer and you signed as the president?

A Yes.

Q Is that correct?

A Yes.

Q That's in your handwriting, the word "president"?

A Yes.

Q This shows wages of $6590; is that correct?

A Yes.

Q For yourself and Gil Fisher?

A Yes.

Q The same year you filed Government Exhibit 3, didn't you? This is the tax return, the joint tax return, for you

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self and Gil Fisher?

A Yes.

Q Once again, you signed this? Is that right?

A Yes.

Q Singleton signed it?

A Yes.

Q You signed Gil Fisher's name?

A Yes.

Q This one only lists $5590; is that correct, in wages?

A Yes.

Q So there is a $1000 understatement, is that not correct?

A Yes.

Q You have indicated you thoroughly reviewed the returns; is that correct?

A Yes.

Q I take it that this understatement was a mistake on Mr. Singleton's part?

A Yes.

Q Not yours?

A No.

Q Mrs. Fisher, I want to put in front of you Government Exhibit 1. This is your federal income tax return

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pgcg 3 R. Fisher-cross

for 1967; isn't that right?

A Yes.

Q This is the one you signed under penalties of perjury along with Mr. Singleton?

A Yes.

Q I want to direct your attention to a schedule, handwritten schedule, of medical and dental expenses. You see that right in front of you; is that right?

A Yes.

Q Whose handwriting is that schedule in?

A This is Mr. Singleton's handwriting here.

Q The figures and information that Mr. Singleton put by his hand on that schedule, you gave him, right?

A I gave him the information.

Q And the figures?

A Right.

Q There is no question, is there, Mrs. Fisher, that a lot of the information and figures that you gave him for the schedule is phony?

A Yes. It was phony.

Q I want to go back to 1971. Remember? I think you indicated that you and Mr. Singleton had had a chat about the fact that the IRS was looking into these returns; is that right?

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A In 1971?

Q Do you remember that you testified the IRS co[illegible] you around 1971?

A Yes.

Q You got upset?

A Yes.

Q You talked to Singleton and you went down and [illegible] up that document with the 1967 date on it, Government Exhibit 29, right?

A Yes.

Q We are back in this period of time again.

Didn't Mr. Singleton tell you you needed to [illegible] some bills, doctor bills, to substantiate the figures that appear on this schedule, medical and dental expenses? Isn't that right?

A Yes.

Q Of course you knew at the time, as you know now, that the schedule was phony, right?

A Yes.

Q So you went out, did you not, and proceeded to [illegible] Mr. Singleton some phony bills for submission to the Internal Revenue Service?

A Yes.

Q I want to show you what has been marked as Exhibit

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A for identification. This purports to be a doctor bill ... a Thomas L. Day, M.D., on West 135th Street; is that right?

A Yes.

Q It is a bill in the amount of $500; is that r...

A Yes.

Q That is a phony bill?

A Yes.

Q You typed it up, did you not?

A Yes.

Q And Gil Fisher had nothing to do with it?

A I did the typing.

Q The question was: Gil Fisher had nothing to ... with that bill; isn't that correct?

A Yes.

Q Under no stretch of the imagination did you ... any doctor bills with Dr. Day for $500?

A He is a dermatologist and they cost a lot of ...

Q I appreciate that, but you didn't run up any $500 bill?

A Yes.

Q Yes you did, or yes you didn't?

A Almost $500.

Q You did run up almost $500?

A Yes.

Q Let me show you Exhibit D, which Mr. Feinberg will courtesy stipulate is the actual bill prepared by Dr. Day for Mrs. Fisher for the year 1967. Actually this is only $65, is it not?

A Yes.

Q So when you testified a minute ago that you ran up close to $500 in bills with Dr. Day you were not telling the truth?

A I told you before, the bill was phony because I did a little padding to the bill.

Q You padded the bill from $65 to $500?

A That's right.

MR. NAFTALIS: May I offer Exhibits A and D.

MR. FEINBERG: No objection.

XXX (Defendant Exhibits A and D received in evidence)

Q I want to show you another supposed bill, Exhibit B, for identification, for a Robert J. Purnell, M. D., 9 Park Avenue in Manhattan. That's a bill for professional services in the amount of $700; is that correct?

A Yes.

Q That, I take it, is another phony bill that was prepared for submission to Mr. Singleton to give to the IRS; is that correct?

A Yes.

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Q You typed that, right?

A Yes.

Q This is your handwriting?

A Yes. It is a phony bill.

MR. NAFTALIS: I will offer this one in evidence Exhibit B.

MR. FEINBERG: No objection.

XXX (Defendant's Exhibit B received in evidence.)

Q You are familiar, are you not, with Dr. Calfon

A Yes.

Q You know a Dr. Calfon, don't you?

A Yes.

Q You list him on that phony medical and dental schedule that you and Mr. Singleton made up for an amount $450,right?

A Yes.

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Q At the time that you and Mr. Singleton talked about getting up a bill for him, you know, with bills to cover these things, you made up another phoney one for Dr. Calfan, didn't you?

A Yes.

Q Let me show you C for identification and ask you, Madam, if you made that up?

A Yes.

Q It is your typing?

A Yes.

Q There is some handwriting there, is there not?

A Yes.

Q That is your handwriting?

A Yes.

Q As a matter of fact, you attempted to disguise your handwriting there, didn't you?

A Well, like I said before, it is a phoney bill.

Q But you also attempted to disguise your handwriting?

A No, it is my handwriting.

Q Didn't you put it on there, Madam, so it would be hard to tell it was yours?

Madam, do you remember being questioned earlier when you testified against Mr. Fisher a couple of months ago, being asked this question and giving this answer about

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the bill from Dr. Calfon, page 349:

"Q You did attempt to disguise your handwriting?

"A Yes."

A Yes, like I said, it is a phoney bill, like I said before.

Q Now, this bill, this is not on a regular billhead, is it? This is on a prescription slip, isn't it?

A Yes.

Q By the way, normally is it not a fact, Madam, that normally people who are not doctors do not have blank prescription slips lying around their houses, isn't that right?

MR. FEINBERG: Objection, your Honor.

THE COURT: Objection sustained.

Q Isn't it a fact, Mrs. Fisher, that you stole this blank prescription slip from Dr. Calfon's office?

A I did not steal it. I just took it off the desk.

Q Without his permission, right?

A Well, it was right there lying there.

Q With his permission?

A No, I didn't say that. I said it was lying there and I took it off the desk.

Q So, in other words, without Dr. Calfon's permission, you removed --

A Yes.

Q From his office property that belonged to him, that blank prescription slip?

A Yes.

Q Then you typed it and filled it in and made up a phoney bill?

A Like I said, it was a phoney bill.

MR. NAFTALIS: I offer Exhibit C.

MR. FEINBERG: No objection.

xx (Defendant's Exhibit C received in evidence.)

Q You list on that return a Dr. Olivierre?

A Yes.

Q He is your eye doctor?

A Yes.

Q You list him for how much money, $150?

A Yes.

Q That is phoney also?

A Yes.

Q He didn't treat you at all in 1967, isn't that a fact?

A Yes, he did, but I padded the bill so it is phoney. I added more to what he charged. That is why he said it is phoney.

Q He did treat you, but you exaggerated the figures?

A Right.

MR. NAFTALIS: You will stipulate, based on Dr. Olivierre's --

MR. FEINBERG: I won't stipulate at all. You can offer the document.

MR. NAFTALIS: Thank you.

I offer Defendant's F.

xx (Defendant's Exhibit F received in evidence.)

Q I want to show you Defendant's F in evidence, which is a letter from Dr. Olivierre to the Internal Revenue Service in which he lists the times he treated you and he indicates, does he not, that he only treated you on three occasions in 1969 and 1970, isn't that correct?

A Yes.

Q He did not treat you in 1967, right?

A Well, like I said before, phoney bills, right.

Q It wasn't just an exaggeration, it was an outright phoney?

A It was phoney like I said before.

MR. NAFTALIS: Your Honor, might I pass to the jury some of these exhibits.

THE COURT: Pass them around.

The witness has read them, but if you want to pass them around, pass them around.

MR. NAFTALIS: One is the actual bill of the doctor and Exhibit A is the one she made up so I think they can look at them together.

Here are B and C.

Q By the way, Mrs. Fisher, when you were questioned by the Internal Revenue Service Agents on October 4th, 1972, that would be Agents Spadola and Agent Bruh, at your home, didn't you tell them that you actually went around to all of these doctors there and actually got statements and bills from each of them, real ones?

A Yes.

Q So you lied to the IRS again?

A Yes, because everything is phoney.

Q No action was taken against you for that lie?

A Pardon me?

Q Youhave not been prosecuted for that lie that you told the IRS about, have you?

A Not to my knowledge.

Q I take it you have not been prosecuted for any tax evasion based on any of these phoney bills you made up or this phoney schedule that you and Singleton made up, have you?

A Not to my knowledge.

Q You have a nephew, don't you, Louis Snype?

A Yes.

Q He is a fellow who is in a place called Synanon?

A Yes.

Q And he had some problems with addiction?

A He was an alcoholic.

Q I don't mean to-- in any event, you gave him some money or, as a matter of fact, you made a loan to him, didn't you, in 1969,of $350?

A Yes.

Q And then there came a time when you crossed out on your check the word "loan" and you wrote on "for roof and carpentry work."

A That is what we were discussing yesterday. I told you I got part of the money from 511 and also from 636 house because that is my cancelled check you have there.

Q Isn't it a fact, Mrs. Fisher, that the $350 loan that you made to your nephew, that you crossed out the word "loan" on the check and wrote in the words "roof and construction" or carpentry or whatever for these homes so you could try and take a tax deduction for yourself; yes or no?

A The amount is $350 and I say, yes, that is my check.

Q Mr. Snype did not do any roofing or carpentry

for you, did he?

A I didn't say that. That is to Synanon. Pay to the order of Louis Snype, because he was there at their place.

Q As a loan, you testified earlier?

A No, I didn't say no loan.

Q You didn't say loan.

Is it your testimony that a minute or two ago you didn't say that this was a loan to Louis Snype? Yes or no?

A No, I didn't say that.

Q Mrs. Fisher, I had questioned you a few times or several times about statements you made to the Internal Revenue Service which weren't the truth, is that correct?

I mean we have had some questions about it?

A Yes.

Q And you have admitted that they were not true, is that correct?

A Yes.

Q Now, when you went before the federal grand jury you testified under oath and were questioned by one of Mr. Feinberg's colleagues, Mr. Rakoff, and he asked you, did he not, in the grand jury, under oath, whether or not the statements that you made to the Internal Revenue Service

in your interviews were the truth, did he not?

A Right.

Q And you said they were?

A Yes.

Q And that wasn't the truth?

A No, because during that time, the first time I was nervous. We say a lot of things for the first time.

Q The first time. We have talked about a lot of interviews. You have had at least three interviews with the Internal Revenue Service, right?

A Yes.

Q You have been before the grand jury?

A Once.

Q You have talked to Mr. Feinberg?

A Yes.

Q You have talked to his agents?

A Yes.

Q You read the transcript of the last time you testified here?

A Yes.

Q So you are not a novice, are you?

MR. FEINBERG: I object.

MR. NAFTALIS: I withdraw the question.

THE COURT: Please don't make statements. Sustained.

Q I take it you were not prosecuted for perjury, lying under oath,before the grand jury based on the admission you must made?

A Not to my knowledge, like I said before.

MR. NAFTALIS: May I have just a moment?

(Pause.)

Q Mrs. Fisher, you hae been divorced from your husband now, is that correct?

A Yes.

Q I take it, and it was your testimony that in May of 1967 Mr. Fisher left you, is that correct?

A Yes.

Q And that was seven years ago, is that correct?

A Yes.

Q I take it it is your testimony that he left you, is that correct?

A He abandoned me.

Q Abandoned you?

A Yes.

Q Do you recall once again when you were interviewed by the Internal Revenue Service on May 4th, 1973, that you told them that he did not abandon you, that you threw him out of the house in May of 1967?

A No.

Q You deny you ever made that statement?

A No.

Q You don't deny it?

A I did not throw him out of the house.

Q The question, Madam, was did you, when you were questioned by the Internal Revenue Agents, tell them that you threw him out of the house?

A That he left me in May of 1967.

Q But you say -- you deny that you told the Internal Revenue Agents that you threw Gilbert Fisher out of the house in May of 1967?

A Not to my knowledge I said that.

Q Let's see if we can refresh your memory a little better again.

I show you Government's Exhibit 3906 for identification, a conference of an interview that you had with Special Agent J. C. Buckley of the Internal Revenue Service and Special Agent Boltja, that is that fellow right over there, right?

A Yes.

Q I want to direct your attention to page 4, the fourth line, and ask you if that refreshes your recollection that you told this man, Agent Boltja, that you threw Gilbert Fisher out of the house in May of 1967.

A If it is here, thatis what I said, yes.

Q Mrs. Fisher, I'm sorry, I have to go into this.

Isn't it a fact that one of the reasons that led up to Mr. Fisher and you breaking up was his quarreling with you over some drinking that you were doing?

MR. FEINBERG: Objection, irrelevant.

THE COURT: I will let her answer. I am going to hold soon you have reached the ultimate cross-examination in this area.

We are not trying a separation case or anything like that here. This is a simple income tax evasion case.

Q Yes or no, Madam?

A Please repeat it.

MR. NAFTALIS: Mr. Reporter, would you read it back?

(Question read.)

Q Could you answer that yes or no, Madam?

A Well, like I said before--

Q Could you answer it yes or no?

A Yes.

MR. NAFTALIS: Might I ask Mr. Feinberg about a document?

(Pause.)

THE COURT: Can't we move along, please?

MR. NAFTALIS: Yes; this was a matter which Mr. Feinberg and I tried to stipulate.

Q Mrs. Fisher, you have had save deposit boxes, haven't you, at the Manufacturers Hanover Trust Company?

A Yes.

Q You have had them as far back as 1962, a small box?

A No.

Q You deny that?

A I said no. From 19-- the latter part of 1965 into 1966.

Q In other words, it is your testimony you never had a safe deposit box before 1965 or 1966?

A I said I hadfirst gotten the boxes about the latter part of 1965 into 1966 because I still have.

Q Now, you first got a couple of small boxes, isn't that right?

A Yes.

Q And there came a time, did there not -- do you know Mr. Butterfield at the bank?

A Yes, he is the manager there.

Q And Mr. Butterfield told you some time in 1965 or 1966 that the boxes were getting too big, that they were expanding, that you ought to get a larger box?

A No, he did not say that.

Q You don't remember that at all? The boxes were not getting too big?

THE COURT: You don't mean that the boxes were getting too big. You mean the contents of the boxes were increasing evidently.

The boxes are constant in size, are they not?

MR. NAFTALIS: I guess so, yes.

Q Was the contents of these boxes expanding in 1965 or 1966 so you needed a bigger box?

A I got the larger box in 1966. I had the two small boxes before.

Q And they were all filled up, right?

A The two small boxes, no.

Q They weren't filled up?

A They weren't filled.

Q There was nothing in them?

A Papers, my important papers. I just transferred them into the large box.

Q As a matter of fact, isn't it true that in 1966 you got the largest box that the Manufacturers Hanover Trust has, the largest safe deposit box?

A To my knowledge, there is only two sizes, a small one or a large on.

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Q It is a pretty big one, isn't it?

A Well, the large one.

Q At that time in 1966,when you rented the large box from Mr. Butterfield, you put money in it, didn't you?

A When?

Q In 1966 when you rented the large box from Mr. Butterfield at the Manufacturers Hanover Trust Company, you began putting money in it?

A No.

Q Do you recall when you testified against Mr. Fisher in September that you were asked this question and you gave this answer:

"Q The money that he was giving you from the numbers were you putting that in the box in 1965?

"A In 1966 when Mr. Butterfield gave me a larger box. Then I would startputting money in it.

"Q You had this one box?

"A Yes, but that wasn't big enough."

Do you recall being asked those questions and giving those answers?

A No. There was no specific question like that because I started putting money into the box in 1967.

MR. FEINBERG: What is the page number?

MR. NAFTALIS: 313.

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Q Do you deny that you were asked those questions and gave those answers?

A No, I am not denying anything.

Q You did give them?

A But I put money into the box in 1967.

Q Did you not state on page 313, line 18:

"In 1966 when Mr.Butterfield gave me a larger box, then I would start putting money in it."

Do you remember giving that answer?

You don't deny that this transcript is accurate do you?

A I don't know anything about this transcript. You are just showing me that. I know what I said.

MR. NAFTALIS: Mr. Feinberg, you will stipulate the accuracy of the transcript?

MR. FEINBERG: The answer is innocuous.

MR. NAFTALIS: I object to his remark.

MR. FEINBERG: I will stipulate it is an accurate transcript.

MR. NAFTALIS: Thank you.

Q As a matter of fact, when you said in September in 1966 Mr. Butterfield gave me a larger box, I started putting money in it because the other boxes were not big enough, that is because you received in 1966 a very large

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sum of money from this gentleman (indicating). Did you not?

A No, I did not. I did not say that either.

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A.M.

pgcg 1 R.Fisher-cross

MR. NAFTALIS: Please mark this.

(Defendant's Exhibit G marked for identification.)

Q Isn't it a fact that in November of 1966 when you opened the large box it was because Mr. Fisher gave you $193,000

A No, it is not.

Q You just opened the large box --

THE COURT: That's argument. I sustain the objection on the Court's own motion. Don't argue.

Q Isn't it a fact you were sued by Mr. Fisher demanding return of the $193,000 that he gave you in November of 1966?

A No.

Q Let's see if Defendant's Exhibit G refreshes your recollection. This is a summons and complaint, Gilbert Fisher against Rosalie Fisher, State of New York (indicating).

Does it refresh your recollection?

A No, it does not.

Q It does not refresh your recollection?

A No.

MR. FEINBERG: She has answered that it does not your Honor.

MR. NAFTALIS: May I be heard at the side bar on this? I want to offer it and I think Mr. Feinberg may have an objection --

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THE COURT: There is no need for a side bar conference. The witness states that it does not refresh her recollection.

Q Don't you remember that there came a time when you had a dispute with your husband over money? Is that right?

MR. FEINBERG: I will object as to form, your Honor.

THE COURT: I will allow it.

Q Do you remember that?

A Yes.

What did you say?

Q Did there come a time, or don't you remember a time when you had a dispute with your husband over money?

A My husband came to my house one morning stating that he needed some money.

Q $193,000?

A No. He did not state that.

Q As a result of this he got a lawyer named Mr. Bruce?

A Mr. Bruce is my lawyer, yes.

Q He got a hold of him and had discussions and letters were exchanged with Stanley Thomas?

A He was Mr. Fisher's lawyer, yes.

Q And the reason that the people exchanged letters

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was because they claim that Mr. Thomas was asserting on behalf of Mr. Fisher against you about money; is that right?

A It was about money, yes.

Q There came a time, did there not, when you went to Mr. Bruce's office?

A The transaction took place in Mr. Bruce's office.

Q You went to Mr. Bruce's office and you were there, right?

A Yes.

Q And your lawyer, Mr. Bruce, was there?

A Yes.

Q And Mr. Fisher was there?

A Yes.

Q You had been separated for some years at that point. That was 1971, was it not, when you had this meeting?

A Yes.

Q His lawyer, Mr. Thomas, was there?

A Yes.

Q As a result you had a discussion; is that correct? A discussion was held and you talked?

A We didn't talk there because all he wanted was some money and it was a loan that I gave Mr. Fisher.

Q Isn't it a fact that as a result of that discussion a settlement was made of Mr. Fisher's claim that you have been

testifying about, and you gave him $75,000 plus one of the two rooming houses? Isn't that right?

A Right.

Q As a result, the lawsuit against you by Mr. Fisher was discontinued?

A That I do not know.

Q You never saw any stipulation discontinuing a lawsuit brought by your husband against you?

A I have not seen any of those.

THE COURT: May we interrupt for a moment.

Members of the jury, I have another matter that I am going to take during the recess, the time you will now take. It may be a little longer than usual. If I don't call you within 12 or 15 minutes you will understand that I am engaged in this other matter.

Suppose you go inside now.

(Recess.)

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(In open court, jury present.)

BY MR. NAFTALIS:

Q Mrs. Fisher, when we recessed, we were talking about this financial dispute that you had with Mr. Fisher, is that correct?

A Yes.

Q And that was a dispute that not settled and you gave him $75,000 plus one of the houses in 1971, is that correct?

A Yes.

Q At that time, during that meeting, did you tell Stanley Thomas-- you know Mr. Stanley Thomas is Mr. Fisher's lawyer?

A Yes.

Q Didn't you tell STanley Thomas at that time that you returned the $75,000 to Mr. Fisher; that you kept $120,000 for yourself?

A No, I did not.

Q You deny that?

A That is right.

Q You deny telling Stanley Thomas, a member of the bar, that?

MR. FEINBERG: Objection.

MR. NAFTALIS: I withdraw that question.

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Q Do you deny telling Stanley Thomas that?

MR. FEINBERG: I object to the question, it is completely irrelevant.

THE COURT: The objection is sustained.

Q I believe you testified, Mrs. Fisher, that it was you who signed Gilbert Fisher's name on the tax returns, is that correct?

A Yes.

Q Do you remember when you were called to testify before the grand jury, is that correct?

A Yes.

Q You remember that. And you recall, do you not, that you were sworn in, took an oath?

A Yes.

Q And you were shown the tax returns for the years of 1967, 1968, 1969 and 1970, isn't that a fact?

A Yes.

Q You were asked questions about them, isn't that correct?

A Yes.

Q At that time isn't it a fact that you were asked these questions and you gave these answers:

"Q Mrs. Fisher, I show you what has been marked as Grand Jury Exhibit 1, which is a Xerox copy of a joint 1967

tax return filed by you and Gilbert Fisher.

"A Yes."

Then you were asked:

"Q Directing your attention to the bottom of the first page, first to the highest signature; is that your signature?"

And you answered, "Yes."

And then:

"Q Directing your attention to the lower signature, do you recognize that to be the signature of hour husband Gilbert Fisher, Jr.?"

"A Yes.

"Q Was it his custom just to sign his name Gilbert Fisher, not Junior or Senior?

"A Just Gilbert Fisher."

Do you recall being asked those questions and giving those answers?

A Yes.

Q Is that correct?

A Yes.

Q As a matter of fact, that wasn't truthful because that was not Mr. Fisher's signature on the 1967 tax return, isn't that correct? Yes or no?

A That was my signature and I told you why I signed

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Mr. Fisher's name.

Q I didn't ask you, Madam, why you signed Mr. Fisher's name.

A You are repeating the same thing over because you asked me before.

MR. NAFTALIS: Your Honor, may the witness be instructed -

THE COURT: Just answer the questions, please.

Q You testified here in the courtroom that you signed his name. You testified before the grand jury that it was his signature; is that correct?

A Yes.

Q And all I am asking you is that, therefore, the answers that you gave to the questions before the grand jury were not truthful, isn't that correct? Yes or no.

A Yes.

Q And you were later shown-- you were later asked these questions:

"Q Mrs. Fisher, I show you what has been marked Grand Jury Exhibit 2 and I ask you if that is the copy of the joint 1968 income tax return of your husband and you.

"A Yes.

"Q And again, are the signatures at the bottom yours, your husband's and John Singleton's?

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"A Yes.

"Q And did you, both of you, sign it?" - meaning the return.

"A Yes.

Do you remember being asked those questions and giving those answers?

A Yes.

Q And, again, that wasn't truthful, isn't that correct?

A Yes.

Q And then you were asked some questions about the 1969 tax return, which is Government Exhibit 3 in evidence by Mr. Rakoff, an Assistant United States Attorney:

"Q Mrs. Fisher, directing your attention now to what has been marked as Grand Jury Exhibit 3, is this a copy of your and your husband's joint income tax return for the calendar year 1969?

"A Yes.

"Q Once again, are the signatures at the bottom those of your husband, yours and John Singleton?

"A Yes.

"Q Incidentally, you are familiar with your husband's signature, are you not?

"A Yes."

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Do you remember being asked those questions and giving those answers?

A Yes.

Q That was again a time when he did not in fact sign it; you signed it, isn't that true?

A Yes.

Q Let's go to the last one.

You were also then shown the 1970 tax return, the one you now testified that you signed his name on, and you were questioned about it in the grand jury and you were asked these questions and gave these answers:

"Q Mrs. Fisher, directing your attention now to what has been marked as Grand Jury Exhibit No. 4, I ask you is this a copy of you and your husband's 1970 joint income tax return?

"A Yes.

"Q Once again, are the signatures at the bottom those of your husband, you and John Singleton?

"A Yes.

"Q Did both of you sign it?

"A Yes."

Do you remember being asked those questions and giving those answers?

A Yes.

Q That wasn't the truth again, is that correct?

A Yes.

Q Now, before you went into the grand jury, when you were questioned by the agents on the same subject, you also didn't tell them the truth. You also told the Internal Revenue Agents that your husband had signed the tax returns, didn't you?

A Yes.

Q And,of course, he had not, isn't that true?

A I signed, yes.

Q These interviews and grand jury testimony in which you told the agents and told the grand jurors and swore that it was your husband's signature began in October of 1972 and continued through, I believe, April of 1974.

Isn't it a fact that the first time that you ever told anybody connected with the Government or the prosecution or the Internal Revenue Service that it wasn't Gilbert Fisher's signature on these tax returns, but that you had signed his name was in September of 1974?

Isn't that correct?

A I don't quite understand that question.

MR. NAFTALIS: Mr. Reporter, could you read it back?

(Question read.)

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A Yes.

Q And isn't it also a fact, Mrs. Fisher, that you only admitted to Mr. Feinberg, the prosecutor, that you had signed Gilbert Fisher's signature, you only admitted it after he told you that the Government knew that Gilbert Fisher had not signed those returns, isn't that a fact, Madam?

A I admitted it to the grand jury in September that I signed his signature because before when I went before Mr. Rakoff, I was nervous and everything he asked me, I said yes, and I admitted that in September of this year.

Q I don't think that was my question about all the other times you were questioned and said something different than the truth.

My question was, isn't it a fact that it was only in September 1974 that you admitted for the first time that you had signed Gilbert Fisher's signature on the returns and that it wasn't his signature after Mr.Feinberg confronted you with the fact that he knew and the Government knew that Gil had not signed those returns; that you had put his signature on there?

A Yes.

Q Isn't it also a fact that you were advised at the time that Gil Fisher and his lawyer could prove that y[illegible] had

signed his name on there through the use of a handwriting expert? Isn't that right?

A Yes.

MR. NAFTALIS: I have nothing further.

REDIRECT EXAMINATION

BY MR. FEINBERG:

Q These medical bills, these phoney bills, that you made up --

A Yes.

Q -- prior to submitting these bills, did you discuss these bills with your husband?

A Yes, I did.

Q Prior to signing Gilbert Fisher's name on the four joint tax returns for 1967 through 1970, did you discuss signing his name with your husband?

A Yes.

Q Prior to sending those tax returns into the Internal Revenue Service, did you discuss those tax returns and the facts in those returns with your husband?

A Yes.

Q Prior to submitting the Esplanade returns for 1967, 1968 and 1969, the returns that you signed with Mr. Singleton, did you discuss the facts of those returns with your husband?

A Yes.

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MR. FEINBERG: No further questions, your Honor.

MR. NAFTALIS: I have a couple.

THE COURT: Strictly recross. You are not going back over what there was before.

MR. NAFTALIS: No, sir.

RECROSS-EXAMINATION

BY MR. NAFTALIS:

Q These phoney medical bills you made up, you say now, with respect to Mr. Feinberg's quetioning, that Mr. Fisher had something to do with them?

A Yes.

Q Do you remember being questioned under oath -

MR. FEINBERG: Page?

MR. NAFTALIS: 281 and 282.

Q -- when you were testifying being asked these questions and giving these answers:

"Q Mrs. Fisher, there is no question that Dr. Day --

MR. FEINBERG: What page is this, please?

MR. NAFTALIS: 281.

"Q -- Dr. Day treated you, is that right?

"A Yes, he was my dermatologist.

"Q You listed payments to him for $500?

"A Well, because Iadded on more.

"Q I said, did you list payments to him for $500?

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"A Yes.

"Q And did you prepare a phoney bill?

"A Yes, like I said, there were phoney bills.

"Q For $500?

"A Right.

"Q Is that right?

"A Right.

"Q You prepared this?

"A Yes, I did.

"Q There is no question that Gilbert Fisher did not prepared it?

"A No, he did not."

MR. FEINBERG: I object to this.

THE COURT: Objection sustained. The question of the prosecution was whether or not she had discussed this with her husband and you are going over matter that you had asked on cross-examination before.

The objection is sustained.

Q Now, the time these phoney bills were made up by you, I think you indicated was 1971, is that right?

A From the time I filed the income taxes.

Q I think we have established--

MR. NAFTALIS: I am getting into something, Mr. Feinberg, which is very relevant to your redirect

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THE COURT: He is objecting to the form of your question.

"I think we have established."

MR. FEINBERG: That is correct.

Q In 1971, that was the time you were contacted by the Internal Revenue Service and you made up these phoney bills, is that correct?

A The phoney bills were in already.

Q The phoney bills were in already?

A That is right, and my tax return.

Q I know your tax return, but the phoney schedules on your tax return, the one that Mr. Singleton prepared?

A That is the same thing.

MR. NAFTALIS: Let me get the exhibits, Mr. Feinberg.

MR. FEINBERG: Right there.

Q These exhibits here, --

A These are the same thing.

Q These exhibits here, which bear dates in 1970, these are the ones you made up when the IRS was looking, right?

MR. FEINBERG: Your Honor, I will object. We have gone over this.

MR. NAFTALIS: I want to get into something.

THE COURT: Put the question

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Q These bills, do they not, Exhibits A, B and C, indicate thatthey were prepared, these phoney bills, by you at the end of 1970?

A 1970, 1970, 1970.

Q Thank you.

Tha was after the IRS began investigating, isn't that right, they began looking through the return, is that correct?

A Yes.

Q Gil Fisher left you in May of 1967, isn't that right?

A May of 1967.

Q That was, by my count, three and a half years before, isn't that right?

A No.

MR. NAFTALIS: That is all.

REDIRECT EXAMINATION

BY MR. FEINBERG:

Q Did Mr. Fisher come back and forth after the initial separation?

A Yes, he does.

MR. FEINBERG: No further questions.

THE COURT: The witness may step down.

(Witness excused.)

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MR. FEINBERG: The Government would offer in evidence Government's Exhibits 68A.

MR. NAFTALIS: Mr. Feinberg and I would like to have a discussion with your Honor in the robing room about this exhibit.

MR. FEINBERG: Mr. Naftalis speaks for himself.

THE COURT: We will have this matter out of the presence of the jury.

(In the robing room.)

MR. NAFTALIS: Your Honor, what Mr. Feinberg is preparing to offer is a redacted version of this transcript which was received at the first trial in proceedings in Nevada.

I got the redacted thing from Mr. Feinberg this morning at the opening of court and I just have not had a chance to study it and to check what he is offering to see whether or not I specifically object to any other things, but there is one thing that I do wish to object to very strenuously.

I discussed this matter specifically with Mr. Feinberg. There is somewhere in this transcript, I don't know the page, I haven't had a chance to review it yet, reference to -- let me find it, I think it would be easier --

MR. FEINBERG: It is the line --

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MR. NAFTALIS: Let me show the judge the part. It would be much easier.

Your Honor, beginning here (indicating) and continuing, I don't object to all of it by any means, I just want you to read from there to the top of 49 so I can make my objection.

THE COURT: What are you objecting to?

MR. NAFTALIS: Your Honor, although I would like to object and I will make a formal objection on the record, I know I cannot keep this whole thing out as a practical matter, and the admission he was a good moneymaker, one of the best, I am not objecting to, but I am objecting to specifically the question beginning on page 49, line 2:

"Q What happened then?

"A I am an illegitimate gambler and you begin to have an awful lot of trouble with the law and we had to close down the business. We closed it down temporarily. We opened it up again. We were locked up by the Federal Bureau of Investigation on October 8th, 1970."

Your Honor, I told Mr. Feinberg that I was perfectly willing to have this-- there is no question he is a gambler, I don't think, based on this transcript, but I think that paragraph is so violently prejudicial, it ought to be redacted to state that "I am a gambler and that I closed up

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in October 8, 1970."

To put in this prejudicial thing about "I am an illegitimate gambler, I have got a lot of trouble with the law, I was locked up by the FBI," he will be convicted by this jury because they think he is a bad man --

THE COURT: I instructed the jury the last time they are not concerned with his illegal activities and it was only admitted for the purpose of showing he had a source of income.

I have no objection to redacting this as long as the substance of his testimony remains that he was an illegitimate gambler and that was apparently his source of income, which basically, of course, is your defense, but they had to close down the business and they opened again, and then they discontinued business on October 8th because obviously this forecloses his source of income in that period of time.

It goes to both purposes. First to show a source of income and then that he didn't have a source of income as of that date.

MR. NAFTALIS: I agree with that redaction save for one thing. Would your Honor eliminate the word "illegitimate"? I don't see what it adds. The jury knows it is numbers.

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THE COURT: No, this is his own statement and I am prepared to redact portions of it, but you cannot insist upon eliminating an admission against interest.

This was his source of income and there is no reason why his answer should not remain.

I don't remember the citation, US v. Johnson, exactly that kind of a case, about 317 US, the gentleman from Atlantic City, Knocky Johnson was the name.

You can agree on the form of redaction with respect to the FBI.

MR. FEINBERT: I will take it out.

THE COURT: That can be done.

What I would say is"I am an illegitimate gambler closed down temporary and we opened it up again and closed down for good on October 8, 1970." No mention of the law and no mention of the FBI.

I wold take out right here "Began to have an awful lot of trouble with the law. We were locked up by the FBI" and I will take that out.

MR. NAFTALIS: Now, I have to go over some of these other things. Apparently Mr. Rosenthal didn't object the first time. You even told me he didn't object to this and since this was coming in he, therefore, wanted this to come in. This was put in at MR. Rosenthal's request, you

told me, these charges, how did they come out.

I am not eventirely sure that I want before this jury that he was arrested for interstate gambling irrespective of the fact that he was acquitted.

I don't see how that's necessarily helpful to him.

THE COURT: The Government did not offer that and doesn't intend to.

MR. NAFTALIS: It is in this redacted version.

MR. FEINBERG: This was read last time because Mr. Rosentnal wanted it.

THE COURT: All right, they won't read it.

MR. NAFTALIS: Can I have approximately five minutes to study this transcript?

THE COURT: No. You had the whole record here and this record has been in the possession of defense counsel for six weeks now.

I am not going to hold up this trial. I told you I have got calls coming in all the time on matters that are back-to-back here.

MR.NAFTALIS: Your Honor, may I respectfully except for the record? I think it seems to me if I am given a document--

THE COURT: I granted your request on redaction. You put your exception on the record. Let's proceed.

(In open court.)

MR. FEINBERG: Your Honor, at this time the Government would offer into evidence 68A.

MR. NAFTALIS: Your Honor has ruled on this already in our discussions.

xx (Government's Exhibit 68A received in evidence.)

MR. FEINBERG: Your Honor, at this time may I read the pertinent portions to the jury.

Ladies and gentlemen of the jury, this is a transcript of the testimony of Gilbert Fisher at the divorce proceeding in the State of Nevada on the 21st day of July 1972.

Mr. Fisher was present in court and represented by his attorney Robert Cohn and an associate Stanley Thomas.

MR. NAFTALIS: Can you tell me, Mr. Feinberg, from which page you will read because I don't have the version that you have in front of you.

MR. FEINBERG: Page 15.

Mr. Fisher on the witness stand:

"Q It is a retail business now, is that correct, Mr. Fisher?

"A Yes.

"Q Will you describe that business for the Court, please?"

"A It is what is known as a variety store. If you walk in, you think it was a drugstore. It has all the hair preparations and it has everything that a drugstore has except for a pharmacy and I also sell television sets and radios and things like that.

That is the business.

"Q What are your approximate earnings, Mr. Fisher, in your business?"

MR. NAFTALIS: Could you state the date of this tstimony?

MR. FEINBERG: I already did. July 21, 1972.

"Q What are your approximate earnings, Mr.Fisher, in your business?

"A I earn approximately $150 a week.

"Q Do you have any other income?

"A No, sir.

"Q Do you have any other assets?

"A No, sir."

Page 16, line 15.

"Q Is it your testimony, Mr. Fisher, that your wife got $118,000 and you got $75,000 out of the money she was holding?

"A Yes, sir."

Page 19, line 4.

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"Q Mr.Fisher, what is your testimony as to what of your money your wife was holding at that time?

"A Well, I had a total of $193,700. This money was in a safe deposit box in her name. It was always my opinion that I never had to be vociferous or belligerent about that money because I always thought that at any time I wanted my half of the money, I could get it. This was my entire attitude. My attitude was she could have half of it. I didn't want $100,000 and give her $50,000, split it right down the middle. This was always my attitude, as I said. That money had been in that safety deposit box for quite some time. I never worried about it. There wasn't any worry in my mind that I was going to have problems getting my money, but, like I say, this is what happened, and this is why we are here.

"Q How much did she keep, Mr. Fisher?

"A She kept approximately $118,000."

"Cross-Examination

"Q How do you know there was $193,700 in that safety deposit box?

"A Well, before that we had been to an accountant, both of us."

Page 24, line 10:

"Q What is it that she wants now, the house?

"A No, she couldn't touch it with a ten-foot pole. That house belongs to my children. She couldn't touch it with a ten-foot pole."

MR. NAFTALIS: She, I take it, is Rosalie Fisher throughout?

MR. FEINBERG: Correct.

Page 27, line 7:

"Q May I ask this question of Mr.Fisher.

"What are the taxes that you paid for the home that is located in New Jersey that is supposed to be the property of your children?

"A I don't pay any taxes.

"Q Does that home have a swimming pool?

"A Yes.

"Q Who lives in that home in New Jersey besides yourself, Mr. Fisher?

"A Who lives where?

"Q Who lives in that home in New Jersey besides yourself?

"A Miss Bernice Duncan and two kids.

"Q And yourself?

"A I don't live there.

"W And you support these two children?

"A That is right.

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"Q And what are the taxes that are on this property?

"A I don't know, I don't pay them. You will have to ask my father and mother.

"Q What income does your mother and father have?

"A I don't know.

"Q How old is your mother and father?

"A My mother is 77 and my dad is 88, and I maintain a home for Bernice Duncan, the mother of these two children.

"Q And you don't live there?

"A No.

"Q Where do you live?

"A 470 Lenox Avenue.

"Q Now, did there come a time when you had that home built?

"A What?

A.M.
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pgcg 1 "G. Fisher"

"Q Did there come a time when you had that home built in New Jersey?

"A No.

"Q You had nothing to do with the building of that home?

"A No.

"Q Well, who did it, if you do know?

"A My mother and father.

"Q And did you counsel and aid them?

"A No. I had a lawyer.

"Q When was that home built, sir?

"A In approximately, I think, '67.

"Q '67 or '69?

"A 1967.

"Q '67, and at that time your mother and father were still at advanced age, were they not?

"A Yes.

"Q You say your mother now is 77 years of age and your father is 90?

"A My dad is 88.

"Q 88. So that home having been built some five years ago, your father then was 83 years of age and your mother was 72, and they built this home and swimming pool for themselves?

"A No.

"Q Who did they build the home for?

"A For Bernice Duncan and the two children.

"Q Where did the get the funds to build this home?

"A I don't know.

"Q What kind of work has your father done, sir?

"A My dad doesn't work.

"Q When was the last time he worked, do you know?

"A I don't remember.

"Q And your mother, when was the last time she worked?

"A I don't remember.

"Q All right now, sir. You visit this home, don't you?

"A On occasions.

"Q On occasions?

"A Yes.

"Q How many times would you say?

"A Whenever I feel like going over there.

"Q Now your two children live there, don't they?

"A Right.

"Q And you said these two children, that is there home?

"A Right.

"Q Those are the only two children you have?

"A Right.

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"Q And you are very concerned with the maintenance and support of these two children?

"A Right."

Page 31, line 8:

"Q Mr. Fisher, are you Gilbert Fisher, Jr.?

"A Yes, sir.

"Q Isn't it true that you are the trustee of 446 North Woodland Street in Englewood?

"A Yes.

"Q And this is the home we have been talking about, isn't it?

"A Yes.

"Q Now, this Bernice Duncan, isn't she the mother of these two children?

"A Yes.

"Q Now you are the trustee?

"A Yes.

"Q And you say that you're -- do you know that your mother and father provided any funds for the building of that home?

"A Do I know whether they did or not?

"Q Yes.

"A They provided all the money.

"Q And you don't know where these funds came from?

"A I don't have the vaguest idea.

"Q And are your mother and father now paying the expenses of running that house?

"A I don't know.

"Q Are you paying them?

"A No, sir, I am not.

"Q With regard to the safe deposit box, I believe you testified that the safe deposit box was in Mrs. Fisher's name, is that correct?

"A Yes, sir."

7-2 "Q Did she have access to that box?

"A Yes, sir.

"Q Did you have access to that box? Were you on the signature card?

"A I was at one time.

"Q At the time it was purported to have contained $193,700, were you on the signature card?

"A No, sir.

"Q Did you have a key to the box?

"A No, sir."

Page 33, line 28:

"Q How did you become a trustee? Who gave you the deed to this place in Englewood, New Jersey?

"A Who gave me the deed?

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"Q Yes, how did you get the deed?

"A It was my mother's wish and my father's wish.

"Q Did she sign the deed that made you trustee?

"A If I'm not mistaken, she signed the deed to the kids. I don't remember."

Page 47, line 12:

"Q Now, what property do you own at the present time, Mr. Fisher, if any?

"A I have a variety store, and I have a house which is one of two houses that was given to me by my wife --"

MR. NAFTALIS: I thought you were started on line 10.

MR. FEINBERG: I have line 10 redacted out. I will read it again.

"Q When did your wife and yourself split up?

"A In approximately 1964.

"Q Now, what property do you own at the present time, Mr.Fisher, if any?

"A I have a variety store, and I have a house which is one of two houses that was given to me by my wife, and that's all I have.

"Q Where is this house that you got when you split up with your wife?

"A In New York City.

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"Q Where is it located?

"A 636 West 158th Street.

"Q Is that a single family house?

"A It is a rooming house.

"Q Whatvalue does that have?

"A Well, I don't know. I think it's approximately $25,000. Mr. Bruce bought it from me.

"Q Did your wife get a corresponding property from you at that time? Another rooming house?

"A Yes, sir.

"Q At approximately the same value?

"A Yes, sir.

"Q Now, your variety store, what is it worth?

"A I guess you might say it is worth about $25,000.

"Q What other property do you have?

"A That's it.

"Q What other income do you have?

"A None at all.

"Q Is there any chance of a reconciliation with Mrs. Fisher?

"A No, sir.

"Q Now, you do have two children whom you acknowledge, is that right?

"A Yes, sir.

"Q What are their ages?

"A 8 and 10.

"Q And your parents are alive?

"A Yes, sir.

"Q What are their ages?

"A My mother is 77.

"Q And your father?

"A My father is 88.

"Q Was there a time when you helped in their support?

"A Oh, sure.

"Q At one time, you were a good money-maker, is that right?

"A One of the best.

"Q How long ago was that?

"A Well, this was up until approximately three years ago.

"Q What happened then?

"A Well, as things go, I am an illegitimate gambler and you begin to have an awful lot of trouble with the law and we had to close down the business. We closed it down temporarily. We opened it up again and we were locked up by the Federal Bureau of Investigation on October 8, 1970.

"Q How did that affect your income?

"A Well, it cut it out altogether. That was the end

of that.

"Q Now, you say that you split up in 1964. When was the last time you stayed overnight with your wife, what date?

"A Oh, I couldn't remember that.

"Q Do you remember giving her a Cadillac in 1967?

"A No, sir.

"Q 1969?

"A Yes, sir.

"Q Do you remember giving her $5,000 then?

"A Yes, sir.

"Q When was the last time that you stayed overnight at your wife's place?

"A I guess any given day in 1964.

"Q You haven't stayed overnight in your wife's place since 1964?

"A No, sir.

"Q Now, is it true that you financed this traveling that Mrs. Fisher was talking about?

"A Yes, sir.

"Q That was out of the numbers income?

"A Yes, sir.

"Q Did Miss Duncan help you in the numbers business?

"A Yes, sir.

"Q Is she helping in the variety store?

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"A Yes, sir.

"Q This $20,000 house, is this where you are staying?

"A No, sir.

"Q And the $20,000, is that the equity that is in the property, or is that the total value of the house?

"A No, that's the total value.

"Q Is it encumbered?

"A What do you mean?

"Q Do you own the house?

"A Me and the bank.

"Q You and the bank. How much does the bank own?

"A I think it has a mortgage now of about $7,000.

"Q What is your net income from that property?

"A Nothing.

"Q Is the property that was conveyed to your wife at the same time?

"A Sir?

"Q The property that was conveyed to your wife at the same time you got clear title to this one, now is it nearby?

"A Well, it's about 16 blocks away.

"Q Is it roughly the same value?

"A Yes, sir.

"Q Now, you say you have two houses. What are the two houses?

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"A What are the two houses? I didn't say I had two houses.

"Q I have a note here that you said you have two houses that you got from your wife.

"A No, sir, just one house.

"Q What was your father's occupation?

"A My daddy used to be an elevator operator.

"THE COURT: Is it a hundred thousand dollar house?

"A No, sir.

"Q What did it cost?

"A I don't know.

"Q How do you know it wasn't a hundred thousand dollar house?

"A Well, I just say it wasn't.

"Q You just said it wasn't. What about the neighborhood? Is it a good neighborhood?

"A It is nice.

"Q Is it a pretty good sized lot?

"A I don't know the exact measurements, you know what I mean.

"Q When your wife was working, Mr. Fisher, do you know what her income was?

"A Working where, sir?

"Q As a seamstress?

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"A No, I don't. I never knew what she made.

"Q Has she had employment, toyour knowledge, since 1949?

"A Yes, sir.

"Q What sort of employment?

"A Well, at the time we had a restaurant.

"Q In 1949?

"A Yes, sir -- no, no, let me get something straight. In 1950 we had a restaurant."

That concludes the reading.

7-3 THE COURT: You don't want any portion read?

MR. NAFTALIS: I have not reviewed this. May I reserve the right to offer portions at some point later? I will show them to Mr. Feinberg.

THE COURT: Before I go ahead, with respect to this testimony there was some reference to the defendant's own statement that he was a gambler, and also that he was in the numbers business. Whether or not the defendant violated any federal law or state law with respect to gambling is not before you, and whether or not he did must enter into your consideration. This evidence was only offered and received on the theory that his activity was a source of income, and also with respect to the period when it is claimed he did or did not have income. The only purpose for which it is received:

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To show a source of income which the government relies upon in support of this case.

Call the next witness.

MR. FEINBERG: John Singleton.

J O H N N. S I N G L E T O N, called by the government, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEINBERG:

Q Mr. Singleton, I ask you to speak in a loud voice so that everybody can hear you in this room. It is difficult sometimes.

A Thank you.

Q How are you currently employed, Mr. Singleton?

A I'm a licensed real estate broker, and I also do bookkeeping and assist in the preparation of various tax returns by recommendation and the general public from time to time.

Q Where are your offices?

A Located at 1693 Amsterdam Avenue, New York, New York, 10031.

Q What is the name of your real estate business?

A It is to manage properties and also rent apartments and kitchenettes and sales.

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Q Mr. Singleton, how many tax returns do you prepare a year, on the average?

A Approximately, because I am a sole proprietor -- I have no help or assistance, no employees -- I would say between 115 and maybe 125.

Q Whose returns do you prepare, in general.

A General public and recommendations.

Q Directing your attention to the years 1967 through 1970, were you employed at that time by Gilbert Fisher and Rosalie Fisher?

A Yes.

Q Do you see Mr. Fisher in the courtroom?

A Yes.

Q Would you point him out, please?

A There he is (indicating). He is sitting next to this gentleman with his hand to his mouth.

MR. NAFTALIS: I can see the identification.

Q When did you first meet the Fishers?

A Prior to 1964. I can't tell the exact time.

Q Whom did you know first? Rosalie Fisher or Gilbert Fisher?

A Rosalie Fisher.

Q Where did you first meet her?

A In South Carolina.

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Q When was that, roughly?

A Sometime about 25 years ago.

Q Did there come a time when you again met Rosalie Fisher here in New York City?

A Yes.

Q When was that, roughly?

A Sometime prior to 1964.

Q At that time, did you also meet Gilbert Fisher?

A Yes. She told me at the time that she was married. I was surprised. I said, "You could have invited me to the wedding."

Q Mr. Singleton, during the period from 1967 through 1970, what were your specific duties with respect to the Fishers?

A I managed --

Repeat your question.

Q During the period from 1967 through 1970, what were your specific duties with respect to the Fishers?

A I managed two properties owned jointly by Gilbert and Rosalie Fisher, his wife.

Q What were those properties? Where were they located?

A 511 West 142nd Street and 636 West 158th Street, New York City.

Q Did you doanything else besides manage those two properties?

A For what period?

Q 1967 through 1970?

A Yes. I also did bookkeeping for Mr. Gilbert Fisher.

Q What did you do for Mr. Gilbert Fisher?

A I did bookkeeping relative to a variety store located at 2312 7th Avenue.

Q Was that Bernice's Variety Store?

A Yes.

Q During the period 1967 through 1970, did you assist the Fishers in the preparation of their tax returns?

A Yes, I did.

Q What tax returns did you assist them in preparing?

A I assisted in the preparation of a garage, Esplanade Garage; also the 1040 forms, and from time to time various forms relative to Esplanade Gardens.

Q Did you assist them in the preparation of any personal returns?

A 1040 returns.

Q What is that?

A It is an individual form that is used by individuals working as an employee in another business, including corpora-

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tions.

Q Were these the joint returns of the Fishers?

A Yes.

Q For what years?

A From 1965 until 1970.

Q Mr. Singleton, explain to the court and jury what you did as the manager of the two properties?

A As the manager of the two properties I had full control of collecting all rents, making minor -- paying out bills for minor repairs, not major, and after -- at the end of each month, which means 30 days, I would prepare a statement for each of the properties, and in the preparation of the return I would set forth in my disbursement column and rent collection column all the monies collected from each property.

After that, if there is a net from each property, I would make out a check separately for each building.

Q Then what would you do with these checks?

A These checks would contain the names -- paid to the order of Gilbert and Rosalie Fisher. I would therefore file both these statements in the same envelope, but they would be separate because they could not be combined.

Q What would you do with these separate checks?

A I would also include the separate checks in the

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envelope and mail them to 2190 Madison Avenue, apartment 2H.

Q Did you receive any compensation for this?

A Yes. I received 7 percent commission. A little later it was increased to 10 percent by consent.

Q Consent of whom?

A Of Rosalie Fisher with, I assume, agreement.

MR. NAFTALIS: Objection to what he assumes, your Honor.

THE COURT: Strike it out.

Q How did you go about preparing the returns for 1967 through 1970, the joint returns of Gilbert and Rosalie Fisher?

A At various times because I can't be specific -- I would call the home of the Fishers. Whoever answered the telephone, I would therefore make an appointment with the taxpayer, and I would tell them, "Let's get a definite date." Mostly it is on Sunday because his wife says she has to go to church, or mass, and she is up at 11 o'clock. So I would try to arrange for that time. While I am talking to her I would tell her to have her husband available and that they must have at that time all information, documents, statements, and plus any cancelled checks of all the payments that they have made other than the payments I had made in the operation of the properties.

Q Then what would you do?

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A Upon my arrival I would ask them to exhibit them to me.

MR. NAFTALIS: I object to this "them" and "they." I would like him to say who he is talking about.

Q Mr. Singleton, upon your arrival where?

A At the home, at 2190 Madison Avenue, apartment 2H.

Q On your arrival there who would be present?

MR. NAFTALIS: Your Honor, I object.

Q In 1967 I want to know who was present.

MR. NAFTALIS: I want a time and place.

THE COURT: He just fixed the apartment, didn't he?

Q Mr. Singleton --

A Do you want a telephone number?

THE COURT: Now now. Just answer the questions.

Q Mr. Singleton --

THE WITNESS: I'm sorry, your Honor.

THE COURT: Listen to the questions. Don't volunteer.

THE WITNESS: Okay.

7-4 Q Mr. Singleton, in 1967 you went to Madison Avenue to the apartment?

A Yes.

Q Who was present that year?

A Both of the taxpayers, Gilbert and Rosalie Fisher.

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Q In 1968, did you go to the apartment?

A Yes.

Q Who was present?

A Both taxpayers.

Q In 1969, did you go to the apartment?

A Yes.

Q Who was present that year?

A Both taxpayers.

Q In 1970, did you go to the apartment?

A Yes.

Q Who was present that year?

A To tell the truth, only one at that time

Q Who was it?

A Rosalie Fisher at that time.

Q Upon arriving in the apartment in 1967, was there a conversation that you had with Mr. and Mrs. Fisher?

A Yes, I did.

Q What was said and who said it?

A I don't recall which one said what you are asking me. Be specific as to tell me what you are referring to.

Q What happened when you arrived in 1967 at the apartment?

A At the apartment in 1967, if I recall, while I was obtaining all the information in the assistance of the prepara-

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tion of the income tax returns, we went over everything that is supposed to be submitted on the tax return.

Q You went over with whom?

A With the taxpayers.

Q Then what happened?

A At this time I said to them, "You are now affiliated with the corporation, the Esplanade Gardens." I said, "With the corporation, any officer can sign the tax return"--which is 1120 issued by the federal government, and with a 1040 form.

Q That's the joint return?

A That's the joint return. I said that one or the other can sign a tax return but they must have a power of attorney.

In the event you don't have a power of attorney, one gives the other consent to sign such a return, they cannot disavow because it would be a controversy.

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Q Did either Mr. or Mrs. Fisher say anything to you at that time?

A Yes, they said, "Well, we usually sometimes sign each other's signature."

Q Who said that?

A I don't recall which one, but they were present at the time when this conversation was being conferred to.

Q Would you explain to the Court and jury, Mr. Singleton, how you actually went about preparing returns, the joint returns?

A The preparation of the joint return, after obtaining all the necessary information and getting or checking all checks, because I did not pay the gas and electric bill and also the tax, the mortgage that was paid by the taxpayer. Rosalie Fisher had a checking account.

Q Mr. Singleton, after getting all the information from Mr. and Mrs. Fisher--

THE COURT: Information as to what?

THE WITNESS: Information as to the preparation of the tax return.

Q That is financial information?

A Yes, I would tell them, "Furnish me with all information and income from all sources because this is necessary in the preparation of an income tax return as set

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forth by the Internal Revenue Code of 1954.

Q Did you tell them, both of them?

A Yes.

Q Then what happened, what would you do then?

A After obtaining that information, I would go and I would say within two or three days, if they have any other additional information to give me in assisting of the preparation of the tax return, tell me and when I bring it back, I am going to leave it, if Mrs. Fisher would be there, and I don't see Mr. Fisher, I mean I would tell her that you must let-- exhibit these tax returns to your husband for his verification and approval and that they must both sign the tax return.

Q Did this procedure occur in 1967, 1968 and 1969?

A Yes, it did.

Q Mr. Singleton, when you went to see the Fishers at 2190 Madison Avenue, did you ever ask the Fishers to offer proof as to any of the deductions that they claimed--

MR. NAFTALIS: I object to leading, your Honor. Let him ask what conversations he had.

THE COURT: Direct his attention to the subject.

Q When you visited the Fishers at 2190 Madison Avenue, did you ever direct their attention to particular aspects of the returns?

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A Yes, I would call each taxpayer, just like I would say to Mr. and Mrs. Fisher or anyone in this courtroom that would come to me, to tell me how they paid off certain bills.

MR. NAFTALIS: I object to what he would do with all the rest of his clients.

THE COURT: Yes, the objection is sustained.

The question is, what did you say to the Fishers?

THE WITNESS: Oh, I think on one return, I think it was 1967, if I am not mistaken, that there was an enormous medical bill. This is coming to me now because this is vivid in my mind.

Q You told this to the Fishers?

A Yes, both were present at this time and I said to them, I said, "You know, this is a big, you know, medical bill because they exceeded about $[illegible]."

I said -- may I continue?

Q Go ahead.

A Thank you very much.

Q I'm sorry.

A So I said to them, I said, "Do you have any checks to substantiate the medical bills?"

They said, "No," they were paid by cash.

Q Who said that?

A Well, I asked Mr. Fisher, "How was the dental bill paid?"

He said,"It was paid by cash."

I am telling the truth.

What did he say --

MR.NAFTALIS: Your Honor, I object to the witness' self-serving statements, "I am telling the truth."

Can he be instructed?

THE COURT: Don't add.

THE WITNESS: Yes. Okay. Thank you.

A I will start again.

Q Mr. Fisher said that he paid in cash?

A Yes.

Q Then what did you say?

A I said, "Now, if this tax return is ever examined you must substantiate these deductions claimed on your tax return,otherwise the IRS will disallow these deductions and you will have to pay additional taxes."

He said, "Well, when the time comes, I will try to obtain that information."

Q Who said that?

A At this time Rosale answered that, not Mr.Fisher.

Q Was Mr. Fisher present?

A Yes, he was present at the time.

Q Directing your attention, Mr. Singleton, to the year 1970, did you perform anyother services for Mr. Fisher in that year?

A Yes, I did.

Q What services?

A I did bookkeeping for a store owned by him personally as an individual, Bernice's.

Q Bernice's Variety Store?

A Bernice's Variety Store, located at 2312 7th Avenue, corner of 136th and 7th Avenue.

Q Did you ever have a conversation with Rosalie Fisher about Bernice's Variety Store?

A I don't know whether she had any knowledge about Bernice's because I never had any discussion with her about it.

Q Did you ever have a conversation with Mr. Fisher about Bernice's Variety Store?

A In what respect?

Q In 1970, did you ever discuss with Mr. Fisher your bookkeeping concerning Bernice's, your job?

A Well, I can tell you what the job of bookkeeping is.

Q Listen to the question. It is poorly framed.

In 1970, did you have a conversation with Mr. Fisher

about what you would do for him in relation to Bernice's Variety Store?

A Maintain the books and records of all information submitted to me.

Q Was that the conversation that you had with him?

A Right.

Q Where was this conversation?

A This conversation was-- well, I will tellyou how it began.

Q No, you don't have to do that. Just tell us where was the conversation?

A At my office, yes.

Q What was the conversation?

A The conversation, he came to my office one day and said to me that he had a store that he was getting together and it was just about complete and that he would like for me to be his bookkeeper and keep everything right.

I said, "You know that I try to keep things as right as I possibly can, no other way."

And he said, "Well, I know that. Okay."

So he said, Where are you going to start?

I said, "The first thing you have to do is to go down to the County Clerk's Office and file a document showing that your intent or you are conducting a business.

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and there is a business form and this form would therefore get you started and you have to also file an application to get an ID number, an ID number in the event that you have employees to report these employees' salaries on a 941 form quarterly, and also you have to go to the City Collector and prepare an application to report sales tax returns quarterly.

Q Tell me something, Mr. Singleton: In 1970, did you prepare any returns for Mr. Fisher separately?

A Originally-

Q Yes or no?

A Yes.

Q Yes?

A Yes.

Q What type of return did you prepare?

A A 1040 form.

Q Individual return?

A Individual.

Q Did there come a time when you had a conversation with Mr. Fisher about this separate individual return?

A Yes. Originally his wife, I think, had filed a joint return so I therefore contacted him.

I said, "Is there any other information you would like to give me in respect to the preparation of the return

involving the store?"

Q What did he say?

A So he said,"No."

I said, "Well, how come your wife filed a joint return?"

I said, "This cannot be done. This is inconsistent with the law..

I said, "An amended return must be filed or otherwise one must be filed if not by me, by someone and I say to begin with, I don't file the returns like this."

Q Mr. Singleton, did you prepare a 1970 individual return for Mr. Fisher?

A Yes, I did.

Q What was in that return? What figures?

MR. NAFTALIS: I object to that. The document speaks for itself.

A I don't recall.

Q Let me rephrase it and ask you another question, Mr. Singleton.

Did there come a time when you had a conversation with Mr. Fisher about that individual return, the contents of it?

MR. NAFTALIS: YOur Honor I am going to object to that unless Mr. Feinberg at the side bar can give some

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relevant offer of proof.

That is not the return which is in issue in this case. I had the impression it was in for some aide memoire purpose and that is the only purpose.

MR. FEINBERG: I will give an offer of proof at the side bar if your Honor requests it.

THE COURT: Suppose you come up.

(At the side bar.)

MR. FEINBERG: Mr. Singleton will testify that he told Mr. Fisher that there were problems with the information in the 1970 returns, the individual return, and that Mr. Fisher told him he would correct it, and a few weeks later he met again with Mr. Fisher and Mr. Fisher said, "Don't worry about it. I will take care of it in my own good time," and that was the end of the matter.

There was never any new return filed.

MR. NAFTALIS: This conversation occurs after the preparation of the individual return. In other words, the problem is, Mr. Feinberg is making this witness testify to matters relating to the 1970 individual return.

I definitely object, your Honor. That has nothing to do with this case.

If it were relating to something between the 1967 through 1970 joint returns, which are in issue in this case

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I couldn't object, but a conversation about a tax return which isn't the subject of this indictment, what difference does that make?

MR. FEINBERG: It is the testimony of Mr. Fisher to Mr. Singleton.

THE COURT: What return?

MR. FEINBERG: 1970 individual return with respect to Mr. Fisher's state of mind.

THE COURT: I was going to say wouldn't that go to his intent? I will allow it.

(In open court.)

Q Mr. Singleton, did you have a conversation with Mr. Fisher about the contents of that 1970 individual return?

A Yes.

Q What was that conversation?

A The conversation, as I recall, was relative to the assets. Yes, I think if I recall, the conversation was relative to the assets.

Q What was the conversation?

A The assets was reported approximately about $40,000 so I said to him, I said, "$40,000? Because we had a lot of conversations as to what the assets were in the store after I had made, I think, either one or two visits there, and he

was trying to ascertain what would be the assets, fixtures, and et cetera, so it was an estimate at that time.

So I said, it was an estimate - I siad,"Well, this estimate contains what would you say" because I said "I will have to see your bill of sale, the bill of sale, showing the cost of all the fixtures and et cetera."

Q What did he say?

A He said, "Well, I don't have the bill of sale available."

I said, "In the meantime, if this tax return is called for an examination, try to obtain the bill of sale because you cannot include moneys spent for like plumbing and installation of panels on the walls, et cetera," so he said, "Okay."

I said, "An amended return has got to be filed because this -- youf return might involve also another joint return that had been previously filed by your wife, assuming - I was under the impression that you both were together at this time."

He said, "No, well, you know we are separated." At that time.

Q Mr. Singleton, did you ever file an amended return for Mr. Fisher?

A No, I didn't file no amended return for him

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personally, no.

Q Did you ever ask him about the amended return subsequent to this conversation?

A No, I did not ask him.

Q Did he ever present you with any records that you requested?

A No, not that pertained to him personally.

THE COURT: Suppose we take our luncheon recess now.

Members of the jury, I will ask you to please be inside so we can start at two o'clock.

(Luncheon recess.)

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AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

J O H N L. S I N G L E T O N, resumed:

DIRECT EXAMAINTION (continued)

BY MR. FEINBERG:

Q Mr. Singleton, when you discussed with Mr. Fisher the 1970 separate return, was Rosalie Fisher present?

A No.

Q Now, Mr. Singleton, this morning you testified that you met with both the Fishers and discussed all -- you asked for all their sources of income is that correct?

A Yes.

Q Did either Mr. Fisehr or Mrs. Fisher ever mention gambling money as a source of income?

A No, never.

Q I show you Government Exhibit 70 and ask if you can identify that, sir.

A Yes.

Q What is that?

A This is money paid to me in excess of additional work done for the taxpayers in regards to the additional services.

THE COURT: You had better keep your voice up. I am

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having a little difficulty hearing you.

Let the Court Reporter read the answer.

(Record read.)

Q Now, is this a check, Mr. Singleton?

A Yes.

Q Is that check made out to you?

A Yes.

Q In 1969?

A Yes.

Q What is this check for, sir?

A For additional services other than--

MR. NAFTALIS: I object until it is in evidence.

MR. FEINBERG: All right.

Q Would you also look at Government Exhibit 72 and I ask if you can identify that.

A Yes.

Q What is that?

A This is a check for a personal loan from the taxpayers.

Q Keep your voice up, please.

A This is a check in the amount of $200 that I borrowed from the taxpayers.

Q Is that in 1970?

A 1970, November 20th.

Q Is your signature on the back of both 70 and 73 for identification?

A Yes, that is my signature.

MR. FEINBERG: The Government will offer 70 and 73.

MR. NAFTALIS: Can I ask just two or three questions on the voir dire, your Honor.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q Mr. Singleton, I show you first, what you have identified as Government Exhibit 70 for identification.

That is a check drawn on the account of Rosalie Fisher to yourself, is that correct?

A Beg pardon?

Q This is a check from Rosalie Fisher made out to you, John Singleton?

A Payable to me.

Q Now, there is some handwriting on the bottom here which says the word "Ray."

Whose handwriting is that.

A This is Rosalie's and when she brought the check to me, I asked her what she had labelled it, and I told her that this was incorrect. I told her this was for special services that I did in other matters not in preparation of the tax returns, because I didn't receive any money for

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the preparation of the tax returns.

Q So after you had that conversation, Rosalie crossed out the words that she had--

A I told her that this is wrong.

Q Whose handwriting is this next to it?

A That is mine.

Q Special services, taxpayers?

A That's right.

Q Now, in 1973, which is a check made out to you by Rosalie Fisher in the amount of $200, it says "Loan."

Is that your handwriting or hers?

A That is hers and that is my signature set forth on the reverse side of the check.

Q I don't think I asked you that.

A I am telling you. Okay. Thank you.

MR. NAFTALIS: Your Honor, could you instruct the witness that he should not answer a question unless he is asked one.

THE COURT: Just answer the question.

THE WITNESS: Okay, I'm sorry, your Honor.

MR. NAFTALIS: I have no objection to 70 or 73.

(Government's Exhibits 70 and 73 received in evidence.)

BY MR. FEINBERG:

xx

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Q Mr. Singleton, I show you 71 marked for identification and ask if you can identify that.

A Yes.

Q What is that?

A That is a 941--

Q Speak up.

A This is a 941 form that I am looking at which is in connection with Bernice's located at 2312 7th Avenue which reflects wages paid out to employees working at this particular location.

Q Did you help prepare this document?

A Yes, I assisted in the preparation of it based on the information received.

MR. FEINBERG: The Government would offer 71.

MR. NAFTALIS: No objection.

(Government's Exhibit 71 received in evidence.)

MR. FEINBERG: May I just explain one point of this to the jury, your Honor.

(Mr. Feinberg reads from Government Exhibit 71 in evidence to the jury.)

Q Finally, Mr. Singleton, I show you Government Exhibit 72 and ask if you can identify this.

A Yes.

Q What is it? Speak up, please.

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A This is a copy of a form known as ST/103, a form issued by the New York State Department of Taxation and Finance.

It is a report of sales tax on businesses in the city of New York.

Q Is this the form for Berman's Variety Store during the period stated?

A Yes.

Q Is that your signature at the bottom?

A Yes.

MR. FEINBERG: The Government would offer 72 into evidence, your Honor. This is offered solely for the purposes of the computations at the end of the case.

MR. NAFTALIS: I have no objection.

MR. FEINBERG: I have no further questions.

xx (Government Exhibit 72 received in evidence.)

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Mr. Singleton, if you will, try and answer my questions yes or no. If you can, okay.

Mr. Singleton, I believe you have indicated that you are an accountant.

A A bookkeeper.

Q A bookkeeper?

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A That is right.

Q You are not an accountant?

A No, I am a bookkeeper.

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Q Haven't you filed an application to be a member of the National Society of Public Accountants.

A I am not a CPA.

Q Please listen to my question. I didn't ask you whether you were a CPA. I asked you whether or not you ever filed --

A I did not file.

Q -- an application to be a member of the National Society for Public Accountants.

A No.

Q When you were interviewed before you testified here by the Internal Revenue Service agents, did you ever tell them you were filing an application to be a member of the National Society of Public Accountants?

A I beg your pardon?

(Record read.)

MR. FEINBERG: I object on the ground of relevancy.

THE COURT: Objection sustained.

Q . Do you recall when you were interviewed on February 26, 1973, by this gentleman, Mr. Boltja, and another agent named Spadola, and another agent named Buckley you told them that you were filing an application to be a member of the National Society of Public Accountants.

MR. FEINBERG: I will object on the ground of

relvancy.

THE COURT: I sustain the objection.

MR. NAFTALIS: It is a prior inconsistent statement.

THE COURT: Please proceed.

MR. NAFTALIS: I respectfully except.

Q You studied prelaw, didn't you?

MR. FEINBERG: Objection.

THE COURT: You may answer.

Q Did you study prelaw? Yes or no?

A Are you questioning me, or would you like to refer your question relative to testimony prior to this date, relative to the defendant?

MR. NAFTALIS: May the witness, your Honor --

THE COURT: Answer the question. We will move along much more quickly.

Did you study any prelaw subjects?

A At NYU, if I must answer it, I had several courses leading to a BS degree, but I did not finish.

Q You were there three and a half years?

A Yes.

Q You didn't finish your last semester?

A No. I went evenings.

Q Mr. Singleton, I believe that you have indicated that you prepared the income tax returns for Gilbert and

Rosalie Fisher during the years 1967 through 1970?

A Assisted in the preparation of the tax return.

Q You didn't prepare them?

A I assisted in the preparation of them.

Q Do you recall when you testified in September giving this answer to this question?

"Q What else did you do besides that?

"A We will get to that in a minute.

"Q What else did you do for them during this period 1967 through 1970?

"A Besides managing the properties?

"Q Yes.

"A I prepared their income tax returns."

Do you recall being asked those questions and giving those answers when you testified?

A I don't recall that because I stand -- I corrected that statement later in the testimony.

P.M. 2--2

Q Mr. Singleton, the question --

A I can't remember that specific question.

MR. NAFTALIS: May the witness be directed to simply answer.

THE COURT: He said he cannot remember whether he was asked that question and whether he gave that answer. He said that he cannot remember.

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Q Does this refresh your recollection? Look at page 459 (indicating).

A I don't recall that.

MR. NAFTALIS: Will you stipulate, Mr. Feinberg, to the authenticity of the transcript?

MR. FEINBERG: Yes.

Q Let me show you Government Exhibit 1 for a moment. This is the 1040, the joint tax return for Gilbert and Rosalie Fisher for the year 1967. Is that correct?

A Yes. That is correct.

Q You signed there at the bottom as preparer?

A Yes. That's all, as the preparer.

Q I take it other than the two signatures here on the left the handwriting on this tax return is yours? The figures?

A Yes, with the exception of these signatures.

Q I believe you indicated, did you not, on your direct examination, that after you filled in these figures on these returns you would then bring them back to the house and leave them with Mrs. Fisher to get them signed; is that right?

A Yes.

Q Is that correct?

A That is correct.

Q You told her, did you not, told Mrs. Fisher, that she would have to get her husband's signature on the tax returns because with a joint return both individuals, husband and wife, must sign the tax returns; is that right?

A Yes.

Q I think youhave indicated also that you were involved in the preparation of the returns for the Esplanade Garage; isn't that correct?

A Yes.

Q Let me show you a document which is Exhibit 13 in evidence. These are 941 forms for the Esplanade Garage from the years 1967 through 1969. You were involved in the preparation of those, were younot?

A I assisted. Because I was not the bookkeeper I don't know too much about it. I don't know nothing about the garage.

Q Your information that you got when you filled out Exhibit 13 -- you filled them out, did you not?

A I beg your pardon?

Q You filled these out for submission to the government?

A As information submitted by the taxpayers.

Q And the information that you got on the Esplanade Garage, which you put down on Exhibit 13, that information

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was given to you by Rosalie Fisher, was it not?

A Yes, at the time.

Q Gil Fisher --

A At other times -- I will go further --

Q Just answer my question, please.

Did Gil Fisher finish any information to you regarding the Esplanade Garage? Yes or no?

A Yes.

Q Do you recall testifying in this building in September under oath against Mr. Fisher and being asked this question and giving this answer on page 502 of the transcript?

"Q Gilbert Fisher did not furnish you any information with respect to the Esplanade, did he?

"A No, he didn't."

Do you recall being asked that question and giving that answer?

A A point on that question --

Q 'Do you recall' --

A Not that specific question because the way you are putting it, you are trying to corroborate me with something.

I will tell you what I did say. I did say --

MR. NAFTALIS: Your Honor --

THE COURT: Just answer the question. Mr. Feinberg

may make a note and ask you about it on redirect examination.

MR. NAFTALIS: You will stipulate to the authenticity and accuracy of the question and answer that I read from the transcript?

MR. FEINBERG: I will stipulate that it was said.

MR. NAFTALIS: Thank you.

Q Isn't it a fact that the only information you ever received regarding the Esplanade was from Rosalie Fisher? Yes or no?

A At what time?

Q The time you prepared the Esplanade tax returns. I don't mean yesterday.

MR. FEINBERG: There are three different returns, your Honor.

THE COURT: That's a sarcastic remark. Please refrain from making it. Conduct yourself properly.

MR. FEINBERG: There are three different returns.

THE COURT: Put proper questions. They will be allowed and if there are objections they will be made. There should not be that kind of comment.

MR. NAFTALIS: I apologize, your Honor.

THE COURT: Listen to the question, please, and answer it, if you can, yes or no.

Q When you prepared the Esplanade tax returns for

the years 1967, 1968, and 1969, the one that were prepared, isn't it true and honest to say that the only information you ever received regarding the Esplanade Garage was from Rosalie Fisher? Yes or no?

A '67?

Q When you prepared any of the Esplanade Garage tax returns. Yes or no?

A 1967 -- these questions you asked me could not be a yes or no answer because there has to be an explanation to some of them because what was prior said might not have been complete because it was at this time they wanted a specific answer; the judge said, "Well, explain," and I was given an opportunity to explain how it came about, and if the judge would give me the honor, I will explain this again, that after I had spoken to Mrs. Fisher she said to contact her husband. I have been to the Esplanade Garage on several occasions asking him questions, and I told him to consult whatever information he got in the operation of the business, to give it to his wife if he is too busy to give it to me; so I therefore contacted his wife and she at the time gave me from a ledger information in the preparation and assistance of the tax return on the 1120 form because I was not the bookkeeper.

Okay?

Thank you very much.

Q It is fair and honest to say after all that, that Rosalie Fisher was the one who gave you the information for the Esplanade Garage?

A After contacting Mr. Fisher.

Q Do you recall when you were questioned in September of this year youwere asked this question and you gave this answer?

"Q And the only information you ever received in respect to the Esplanade was from Rosalie,was it not?

"A Right."

A You are repeating the question over and over.

Q It is a different one.

A I have answered these questions. You keep repeating them.

MR. FEINBERG: Your Honor, I don't understand the purpose of reading from the prior transcript. There is no inconsistency here based on the question.

THE COURT: The jury is instructed to disregard counsel's statement.

Please put questions and let's move along.

Q I think you just stated that Rosalie Fisher was the one who kept the books and records of the Esplanade; isn't that right?

A Yes.

Q And that's where you got the information from?

A Yes.

Q From her and the books?

A That's right.

Q This document, this 941 that you prepared or assisted in preparing, Government Exhibit 13, lists salaries paid to Gilbert and Rosalie Fisher, does it not?

A Yes.

Q You got that from the information that you received from Rosalie Fisher or from the books she kept; is that correct?

A From the books she kept.

Q There came a time, did there not, when you assisted in the preparation of Government Exhibit 7, the income tax return for the Esplanade Garage for 1967? Is it not a fact?

A Yes.

2-3 Q As a matter of fact, the bottom of this return, which is Government Exhibit 7, you signed your name?

A That's my signature. This is Rosalie's because the taxpayer has to sign it.

Q You signed John N. Singleton as preparer?

A Yes.

Q Exhibit 13, which you identified earlier, which you prepared, the 941's, show wages paid to Mr. and Mrs.

Fisher, the two officers of Esplanade, of about $7,000 for that year. I want to direct your attention to this return, Government Exhibit 7, which you signed as the preparer, schedule E, where it says compensation of officers, Rosalie Fisher, Gilbert Fisher; it says amount of compensation, none. Is that your handwriting, the word "none"?

A Yes. That is an error. It is left out.

Q You left it out?

A Yes.

Q I take it when you failed to include the salaries it was not because Mr. and Mrs. Fisher told you to leave that out and cheat the government, was it?

A Oh, no. Definitely not. I don't do that.

Q It was your responsibility for this.

A It was not my responsibility. I say it was an error. It was omitted.

Q By you?

A Yes. That's right. But no amended return was filed at that time because there was no question raised about it, and the government will straighten that out, the IRS could therefore add that to the taxpayers' income, additional income.

Q As a preparer or a person that assists in the preparation of tax returns, your obligation is to make sure they

are all honest, fair, and complete; is that right?

A Yes.

Q As a matter of fact, even at the very bottom of Exhibit 7, right above the signature line for the signature of the taxpayer,right above where you signed,you signed and stated, "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete."

Isn't that right?

A Yes, and I called that to the IRS when they called me downtown and told them it was left out. I told the truth about it.

Q You called it to their attention?

A Yes. They asked me and I told them, "Yeah, it was left out, that should have been added to the income."

Q Isn't it a fact that you were interviewed by the Internal Revenue Service on February 26, 1973, by three Internal Revenue Agents, including Mr. Boltja, this gentleman here? They showed you the 941s and then they showed you the Esplanade returns and they asked you how come the income didn't appear and you had no explanation for it?

Isn't that right?

A No, I told them it was left out. That was an error. They asked me and I will say it again.

Q Didn't you say you had no explanation?

A No, I did not. I said it was left out when it should have been added.

Q Let me show you, sir--

A To my recollection.

Q Let me show you, sir, Exhibit 3523, a memorandum of your interview by Mr. Boltja, Mr. Spadola and Mr. Buckley of the Internal Revenue, and directing your attention to page 3, does that refresh your recollection --

A I never have seen that before. Enough said. So what was put down there could be inconsistent or could be an error so don't implicate me, sir. Okay?

MR. NAFTALIS: Your Honor, may the witness please be instructed to just answer the questions?

THE COURT: Just answer the question.

What did you tell them?

THE WITNESS: I told them at the time there was an error and an amended return should have been filed, but one was never filed.

THE COURT: Does that cause you to change your testimony?

THE WINTESS: Yes, at this point.

THE COURT: What did you tell them?

THE WITNESS: I told them that an amended return should have been filed and it should have been added to the

1040 form. I also had called the taxpayer, Mrs. Fisher, about that, -- not Mr. Fisher, because I did not discuss that with him.

Q So it is fair and honest to say, Mr. Singleton, that if Mr. Spadola and Mr. Boltja wrote down on their notes of their interview with you that you had no explanation for your failure to include the wages and salaries of Mr. and Mrs. Fisher on the Esplanade tax return, they were in error?

MR. FEINBERG: I object.

MR. NAFTALIS: That is what he said.

THE COURT: Sustained as to form and your comment is stricken as to what he said.

THE WITNESS: Thank you very much, your Honor.

Q Is it your testimony that Mr. Spadola and Mr. Buckley were in error if they write in a report--

A I can't answer that question.

Q In any event, it is clear that you did not state to them that you were not able to offer an explanation to them for that?

A No, I have never seen that. That is the first time I have seen that report and you are asking me this question.

Q That is not my question.

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I am asking you whetheror not you said it, that is all.

A Not in all the contents that is written up there.

Q Now, I take it that you also forgot to put in these wages and salaries when you prepared Exhibit 1?

A Yes, I said that already.

Q I am showing you another return you left it off of. That was the Esplanade return.

I am showing you this one, Exhibit 1, the 1967 return.

A It was not done because I had a big confusion with this medical bill.

Q I just asked you whether you left it off?

A Yes, it was left off, yes.

Q Mr. Singleton, you also continued your work on the Esplanade Garage returns in 1969, is that correct? You prepared the 1969 return for the Esplanade Garage, the 1120, which is Exhibit 9? You once again signed as the preparer, is that correct?

A Yes.

Q That return reflects, does it not, $6,590 in salaries to Gilbert and Rosalie Fisher, wages?

A Yes.

Q Now, you also prepared Exhibit 3, didn't you, which

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is the 1040 return, the joint return for Gil and Rosalie Fisher for 1969, is that correct?

Is that correct, sir?

A Yes.

Q And on this one it lists a thousand dollars less?

A Yes.

Q $3,590?

A Yes, I see it. That is an error.

Q So this understatement in income of a thousand dollars for the 1969 return is another error?

A Yes.

Q You just made a mistake?

A That's right, I made a mistake, that is all.

Q I want to show you Government Exhibit 4 for a moment. This is the joint income tax return for 1970 for Gilbert and Rosalie Fisher, isn't it?

A Yes, this is mixed up, I know. Go ahead. I will listen to you.

Q I appreciate it.

A Yes.

Q You signed it again as the preparer?

A Right.

THE COURT: Keep your voice up.

THE WITNESS: Yes. Okay.

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Q And in 1970 I believe your testimony is that all the information for this joint tax return was supplied by Rosalie Fisher?

A Yes, particularly that year. Mr. Fisher was not available. When I went to the house, I asked where was Mr. Fisher and why wasn't he here, and she said she had all the information to furnish me at the time.

He was not available at that time.

Q They were separated?

A I didn't know.

Q You learned that later?

A I learned that later. As of what time, prior to 1970, but at this time I didn't see him, but the other times he was there.

Q That is what you said?

A Yes. I don't know if and when anybody was separated, sir. That is not for me to say. I am not in that position.

Q I take you never went around, checking up in the house to make sure he wasn't there?

A I don't go there. I don't even visit them.

Q By the way, when you filled out the 1970 tax return for Gilber and Rosalie Fisher and you indicated yougot all the information from Rosalie-- let me withdraw that and start again.

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You testified here about some work you did for Mr. Fisher on a variety store called Bernice's, is that right?

A Yes.

Q And that work,you filled out papers for him and helped him,and those are in evidence, you have testified about them, is that correct?

A Yes, that is correct.

Q You were acting in your professional capacity?

A Yes.

Q At the time you filled out Government's Exhibit 4, the tax return for 1970, you knew that he had this variety store that was in operation?

A No, sir.

Q You did not know that?

A Never, until he came to my office for the first time. I did not know he was in operation of this variety store all the times that you are going to put the question to me.

Q This tax return, sir, was filled out in February of 1971, is that correct?

A Yes.

Q Covering the year 1970?

A That's right.

Q Is it not a fact, sir, that at that time you knew

as a matter of fact that Gilbert Fisher had a variety store?

A Sure, because I was the bookkeeper at the time.

Q And isn't it a fact that you did not, even though you were aware of that fact, you did not include in this tax return, Government's Exhibit 4, any income from that variety store? Yes or no.

A What do you mean,didn't include any income from the variety store?

Q Show me, sir, where in Government Exhibit 4 you make the slighest reference--

A No, it does not contain-- in this particular form here, this-- because at this time-- oh, now I see what you are driving at.

I will explain this.

Q Just answer my question.

A No, sir. I cannot just say yes or no in this case. Because when Rosalie Fisher gave me this tax return--

THE COURT: Listen to the question again and answer the question. If there is anything further to be developed, counsel for the Government will put a question to you and we will move along much more quickly that way.

What was the question again?

(Question read.)

Q To Bernice's? Is there any reference -- did you make any reference to it in that tax return?

A Not in this joint return because this was Rosalie, I got the information when I went to her house and Mr. Fisher was not available at that time.

Then when I later found out that Mr. Fisher said that he was not there and don't put anything down about the property, I said, "Well, this is funny because if you have got the store, should I include the sotre in the joint return. Your wife has filed a joint return and by so doing, and you have a store, so, therefore, how come she didn't tell me about your having the store, and I thought she knew that you had the store at the time and I prepared the tax return, and it was never mentioned," so I said, "an amended return had to be filed.

Q Going back to my question, Mr. Singleton, isn't it a fact that at the time you prepared that return, which is Government's Exhibit 4, you knew that Gilbert Fisher was operating Bernice's Variety Store?

Yes or no?

A At this time?

Q Yes, did you know it or didn't you when you filled out that return?

A I knew when I filled out this return, but I have

still got to refer that I filled out this return with the wife.

THE COURT: Just answer the question, now, and then Government counsel will afford you the opportunity for the explanation.

THE WITNESS: Okay. Thank you.

Q It is fair and honest to say that although you knew at the time you prepared this return that Gilbert Fisher was operating Bernice's, you made no mention of that fact in this tax return, is that right?

A No, it is not on that tax return.

Q That wasn't any attempt on your part to cheat anybody?

A No, because I can clarify that.

Q I asked you a question. Was it any attempt on your part to cheat anybody?

A No, sir.

THE COURT: If you have anything to add, Mr. Feinberg will ask you a question.

Q Now, there came a time, did there not, when Rosalie Fisher filed, in addition to this joint return, an individual return for the year 1970, which is Government Exhibit 5, isn't that right? Did there come a time after you filed the joint return for Gilbert and Rosalie Fisher

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for 1970, you later filed an individual return just for Rosalie, is that right?

A Who later filed it?

Q Did you prepare it later?

A I don't recall having prepared any individual return for Mrs. Fisher to any extent. There was a question about that in the prior testimony because you are asking to refer to that --

THE COURT: Just answer the question.

A I can't recall that particular incident.

Q Is it your testimony that you do not recall preparing an individual tax return for Rosalie Fisher in 1970?

A Yes, Mr. Rosenthal asked me that, sir, and I told him at that time I was confused.

MR. NAFTALIS: Your Honor, I didn't ask him what Mr. Rosenthal asked him.

I asked him what he recalls.

A You must remember this is a long time ago.

THE COURT: No, just answer it.

Do you recall whether or not you filed another return for Mrs. Fisher for the year 1970, an individual amended return?

THE WITNESS: I recall I assisted in the preparation of a joint amended return whereby she came to my office

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later and told me that she forgot to furnish me information relative to some dressmaking thing and I said, "You should have told me because there will be a question by the IRS on a matter of this nature. An amended return should be filed and include the income from the dressmaking business."

This is what I recall when she came to my office and showed me this, as I recall, your Honor.

I am covering all these questions you are going to approach to me which was previously asked me.

Q Let me ask-- see if you can answer my question.

Do you recall whether or not you prepared for Rosalie Fisher in 1970 an individual income tax return?

A I recall-- no, I recall--

Q Yes or no. I don't care what else you prepared. I just asked you about that.

A I don't recall that direct.

Q Let me show you Government's Exhibit 5 in evidence, this document, and see if it refreshes your recollection that maybe you prepared it, which is an individual income tax return for Rosalie Fisher.

A That is not even signed and I don't recall preparing that.

Q So you did not prepare it?

A I don't recall that, no, sir.

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Q Do you recall when ou just testifiedhere a few weeks ago, in September, being asked these questions and giving these answers; page 539, Mr. Feinberg:

"Q Now, sir, you prepared this separate return" -- referring to Government Exhibit 5 -- "did you not?

"A Yes.

"Q I show you Government Exhibit 5, is that right?

"A Yes.

"Q Is that signed by you as the preparer?

"A No, it wasn't signed, but I prepared the tax return.

"Q There is no question that you prepared it, but you did not put your name down as the person who prepared it, is that right?

"A No, but I admit that I prepared it."

Do you recall being asked those questions and giving those answers when you testified in this building in September of this year?

A I slightly recall, now you are bringing my attention to it, but I was not definitely specific about that information.

Q That wasn't my question whether you were specific or vague. My simple question to you, Mr. Singleton--if you don't understand any of my questions, ask to have them rephrased, was: Do you recall being asked those questions when

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you testified under oath in September and giving those answers? Yes or no?

A I don't recall definitely, but I might have said something like that.

You know, I don't want to be telling no lies. I might have said it.

MR. NAFTALIS: Mr. Feinberg, will you stipulate to the accuracy of the transcript, those questions and answers?

MR. FEINBERG: I do.

MR. NAFTALIS: Thank you.

Q This tax return about which you now recollect preparing, Exhibit 5, that was done after the joint return, wasn't it?

A Yes, that is right. Now I think to be specific, I think when this happened, Mrs. Fisher came to my office; now I don't know what date she came by, and I said,"How come you didn't furnish me this information when I originally filed the original joint return," and then she said, "Well, I didn't want to give you that information because I didn't have all the documents of proof."

Q So you then filed Exhibit 5, this is the individual return, after you did the joint return, which is Exhibit 4, is that right?

A Yes, and I told her that--

Q That is all my question is, when you did it.

A Yes, that is right.

Q Now, on this one here, Exhibit 5, which you testified was prepared after Exhibit 4, it indicates it was done on January 20, 1971, whereas Exhibit 4, which was done before it, has a date of one month later, February 22, 1971.

I take it that is a mistake,that January 20th?

A That is confsued, the date.

Q Just an error?

A That's not the right date.

Q Let me just show you another thing.

When you first prepared Exhibit 4, Mr. Singleton, let me turn to line 37, this is the joint return, the one you did first, on line 37, it indicates that income was received in the amount of $1802 for rents.

I think there may be a Schedule E, too, which might be helpful.

Is that correct?

A Yes, that is the net profit from rents.

Q Those profits came in from those rooming houses, is that correct?

A Yes.

Q As a matter of fact, you were the agent, I guess

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that is the right word?

A Management agent.

Q Management agent, and it was your job to make sure the rents were collected?

A Yes.

Q And you received a commission for doing it which is normal?

A Yes. It wasn't in there because of the dates, if that is the next question you are going to come to me with. That is right. I told you the date was not the right date.

Q Wait a second. Let's see if we can figure this out.

You did this one, that is Exhibit 4, and that one you included the rents and you knew about the rents because you used to collect them.

Then --

A This was --

Q Let me finish.

A There is a mix-up here. There was a mix-up with the separation and I don't own the property and I have transferred over to Rosalie.

Q I don't blame you.

A It was really mixed up so a lot of things you ask me, I cannot even answer. I was mixed up with Mr. and Mrs.

Fisher. I was in the middle of things.

I am telling you like it is. I tried to do it as best as I could.

MR. NAFTALIS: Your Honor--

THE COURT: Put the next question..

Listen to it and answer it.

A Okay.

Q On Exhibit 4 we have established, which is a joint tax return for 1970, you have indicated you did that solely on information that Mrs. Fisher gave you, is that right?

A Yes.

Q On that return, you included rent money, is that correct, as income?

A Yes.

Q And you knew about the rent money because it was part of your-- it was your job to collect it?

A That's right.

Q Then, later in that year, you went out-- well, actually you got together with Mrs. Fisher and you did and helped her prepare an individual tax return, is that correct?

A Assist in the preparation based on the information that she furnished me and I asked her why she didn't furnish that. Okay?

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Q On this one, which you did later, this one you left off any reference to rents, is that right?

You don't include it as income.

Yes or no?

A I am saying an amended return was filed including this and this.

Q I am not talking about when down the line you might have done something. I am talking about at the time.

A I said the dates are incorrect.

Q Mr. Singleton, just listen to the question. Don't fight with me, just listen to the question.

When you went out and did this return --

A I didn't go out. The taxpayer came to me.

Q When you did the tax return, wherever you did it, you left off the rent item, isn't that correct?

A I couldn't do it. I said there is confused dates so I cannot answer the question. I'm sorry.

Q Wasn't it on the earlier-- it was on the earlier return?

A I don't remember because it was too confusing.

Q Can I finish my question before you answer it?

A Okay.

Q On the earlier return that you prepared, you put the rental income down, right?

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A Yes, sir.

Q On the later return you did not, did you?

A It is not there. That is all I will answer you.

Q Your job was to collect the rents, wasn't it? Yes or no?

A Yes.

Q In this later return, Mrs. Fisher didn't tell you, did she, when you were doing the later return for her, the individual one, on this one, "Don't put down the rental income, I want it left off"?

A Oh, please, don't approach me with nothing like that. I don't do that kind of a thing.

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Q Let me see if I understand.

You have testified, have you not, that you never saw Mr. Fisher around 2190 Madison Avenue after 1969; is that right?

A I said what? Repeat your question, please.

Q Is it true that you didn't see Mr. Fisher around Rosalie Fisher's apartment after 1969?

A No. Not 1970, I did not.

Q You were first interviewed by the Internal Revenue Service in this case, were you not, sometime in 1973? Is that correct?

A I don't recall the date.

Q What is your best recollection of when you first talked to them?

A I don't remember.

Q You have no idea of any time?

A I don't remember the exact date. I will not implicate or incriminate myself by giving dates.

Q You do recall speaking to them, don't you?

A Yes. They came to me and approached me, and I furnished them with whatever information I had or could obtain from the taxpayers.

Q They spoke with you on several occasions; isn't that right?

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A Yes, they did.

Q You answered questions that they asked; is that right?

A To the best of my knowledge.

Q Before you testified here today, you have had conversations with Mr. Feinberg: is that right?

A I didn't have no conversations.

Q You never had a conversation with Mr. Feinberg?

A What sort of conversation are you referring to?

Q Did you ever discuss the facts of this case, your testimony here --

A He asked me questions, yes.

Q And those questions related to what you testified here, didn't they?

A Some of them, but not all of them.

Q But they related to Gilbert and Rosalie Fisher?

A Yes.

Q You spoke to Mr. Feinberg a number of times about that; isn't that right?

A I don't contact Mr. Feinberg no number of times. Only when he call me and tell me I have to come down to witness, to tell it like it is.

Q You spoke with Mr. Feinberg as recently as lunch time, right?

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A No. I did not speak with him.

Q You had no conversation at all with Mr. Feinberg, as recently as lunch time, today, did you not?

A I had nothing to say to him, no.

Q You didn't talk to him?

A No. What am I going to talk to him for?

Q He didn't walk out with you? You didn't talk to him?

A No.

Q You didn't leave this floor together?

A I beg your pardon? Leaving the floor together, no. I was in the witness room, sir. You want me to tell you, sir

Q I asked you a question. I didn't ask you for a remark. Just answer my question.

A I did not have any conversation with Mr. Feinberg. After the recess I did not.

Q Who brought you out of the witness room?

A I took myself out.

Q Mr. Feinberg didn't go in and get you?

A Got me?

Q Yes.

A He just tell me it is recess and I can come out.

4-2 Q And you left with him?

A I left with him, yes.

Q Isn't it a fact, sir, that during one of your conversations with the Internal Revenue Agents that you indicated to them you, yourself, were being investigated for the years 1965 --

MR. FEINBERG: I will object to that.

A I was not investigated.

MR. FEINBERG: That's irrelevant.

MR. NAFTALIS: It goes to his bias and motive, your Honor.

A I was never investigated in all my life.

THE COURT: As long as you made the statement in the presence of the jury I will let you ask the question. It is proof of absolutely nothing as far as any charge against the defendant is concerned.

THE WITNESS: Thank you very much, your Honor.

Q Did you tell Special Agent Buckley and Revenue Agent John Spadola on January 19, 1973 that you,yourself, were being examined for the years 1965, 1966, and 1967 regarding the properties you managed for Gilbert and Rosalie Fisher? Yes or no?

MR. FEINBERG: I object to the question.

THE COURT: I told you why I am allowing it. Normally I would not.

A Yes.

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THE COURT: Put the next question.

Q This investigation is concluded and nothing has happened?

A I am clean, sir. You can bet on that. And if you want to --

THE COURT: Now stop. There is no question pending.

THE WITNESS: Okay. Thank you very much. I'm sorry.

THE COURT: Put your question and let's move along.

Q Mr. Singleton, did there not come a time in approximately 1971 when the Internal Revenue Service began auditing the 1967 tax return for Gilbert and Rosalie Fisher?

MR. FEINBERG: I will object to the question. It is irrelevant.

THE COURT: If he knows.

Do you know whether or not they were auditing the tax return?

A Yes. They had a notice of examination and I contacted Mr. Fisher --

Q I just asked you one question. You can answer a question, can you not?

A Okay. I'm sorry.

Q Isn't it a fact that one of the items that they were concerned about was the medical deductions? Correct?

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A That's right.

Q The medical deduction schedule?

A I was concerned about it too.

Q Indeed, as a matter of fact, you told us that Rosalie said she would take care of it when the time came?

A No.

Q Didn't Rosalie Fisher tell you that? Didn't you testify on direct examination that Rosalie Fisher told you that if the subject ever came up she would take care of the problem?

MR. FEINBERG: I don't believe that was the testimony.

THE COURT: The jurors' recollection will govern.

Q You don't remember that?

A You are twisting.

Q In any event, sir, is it not a fact that Rosalie Fisher and you had a conversation about the subject of medical deductions, and she supplied you with documents and bills for submission to the IRS? Is that right?

A That's correct. That's right.

Q It was Rosalie Fisher who supplied you the medical bills for submission to the IRS and not Gilbert Fisher; is that correct?

A That's correct.

Q I show you Exhibits A, B, C, and E. I ask you, sir, those were the sum or all of the medical bills that Rosalie Fisher, her documents, that she gave you for the Internal Revenue Service? Isn't that right?

A I assume that they are the ones.

Q They conform, do they not, with the schedule of medical and dental expenses that are attached to Exhibit 1, the 1967 tax return? These four doctors are involved, right?

A Yes. They correspond.

MR. NAFTALIS: E has not been received yet. The others have.

MR. FEINBEG: No objection, your Honor.

XXX (Defendant's Exhibit E received in evidence.)

Q When you got these bills, Defendant's Exhibits A, B, C, D and E, you, as the taxpayer's representative, submitted them to the Internal Revenue Service; is that correct?

A Yes. At the time.

Q Did you question Rosalie Fisher at the time she gave you these bills as to whether or not these were authentic and legitimate bills?

A I assumed that would be authentic as she presented it to me. That's the taxpayer's problem and not mine. I did not contact no doctors. I don't know them from Adam.

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Q I take it Rosalie Fisher never told you at the tim she presented these bills to you to give to the Internal Revenue auditors that Exhibits A, B, C, and E, were phony bills that she had prepared?

A No, sir.

Q I want to show you Exhibit B, for example. Exhibi B purports to be a bill of Robert J. Purnell, M. D., on Park Avenue; is that correct?

A That's what it says.

Q That's for $700. This bill doesn't have any letterhead on it, printed letterhead or engraved?

A No, it does not.

Q It is just a plain piece of paper with the words in ink, "Robert J. Purnell, M. D.," written on it?

A That's right. As it purports to be.

Q Have you ever seen a doctor's bill like this before

MR. FEINBERG: I object to the question?

A How would I know what a doctor --

MR. FEINBERG: Mr. Singleton! I objected to the question.

THE WITNESS: I'm sorry.

THE COURT: Sustained.

Q Mr. Singleton, I believe you testified in your direct examination that in 1967 when the large medical

expense schedule was presented to you you expressed concern about the size of the deduction relative to the amount of income involved; is that right?

A Yes.

Q You indicated, did you not, that it would be a good idea for bills to be paid by check?

A Or a money order. No more cash because it would be disputable by doctors, et cetera.

Q Between the time of 1967 through 1970, in connection with the preparation of any tax returns that you did, did Rosalie Fisher ever present one check to you to corroborate or establish or prove any medical expenses or deductions?

A Not pertaining to the ones you are talking about, but I think at some other times she did have some checks payable to a doctor where it is required, if I thought it was sufficient to execute the medical deductions. I don't recall which year. I don't recall.

Q I am talkingabout only the years 1967 through 1970, and I am not talking about anything since then.

A I don't recall. The only thing I -- I can't recall about the other years.

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Q Do you have any specific recollection of her ever presenting to you a single check during the years 1967, 1968, 1969, and 1970 to substantiate or corroborate, or prove medical

deductions which she claim she had?

A One of the years -- I don't recall which -- she had one year medical bills that she showed me a check. One year it was not sufficient to expedite the medical deductions. I don't recall which year. I can't remember that.

Q Let's see if I can refresh your recollection.

Do you recall testifying here in September?

MR. FEINBERG: What page?

MR. NAFTALIS: 523.

Q (Continuing) Do you remember being asked these questions and giving these answers?

"Q From 1967 to 1970, did Rosalie ever present one check to you in corroboration or in establishment or proof of medical expenses or deductions?

"A No. I can't remember that offhand.

"Q Well, can you tell us?

"A I don't remember that."

A I'm repeating that today. I can't remember that.

Q You don't remember anything?

A I can't remember that. These specific questions-- I will not make a statement that in fact I don't remember.

MR. NAFTALIS: I call upon the United States Attorney to stipulate to me the accuracy of the transcript as read.

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MR. FEINBERG: I will so stipulate.

MR. NAFTALIS: May I have a moment to consult with Mr. Wallace, your Honor?

I have very little more.

(Pause.)

MR. NAFTALIS: I have no further questions.

MR. FEINBERG: I have two or three questions, your Honor.

THE COURT: Finish with him and then we will take our afternoon recess.

REDIRECT EXAMINATION

BY MR. FEINBERG:

Q Mr. Singleton, prior to receiving these bills from Rosalie Fisher, did you discuss the need for those bills with both Rosalie and Mr. Fisher?

A That's right, at the time that the tax was prepared.

Q Prior to discussing the 3 Esplanade tax --

MR. NAFTALIS: Your Honor, I object to this question. I do not think the answer was responsive to Mr. Feinberg's question. These bills were received in 1971. All he indicated was that the conversation he had was in 1967 at the time of the tax.

MR. FEINBERG: It speaks for itself, your Honor.

Q Mr. Singleton --

THE COURT: Incidentally, in one of your questions you referred to those bills as being attached to the 1967 return.

MR. NAFTALIS: I didn't mean to.

THE COURT: I didn't want to correct you. These were submitted long after the returns.

MR. NAFTALIS: Yes, your Honor. There was a scheduled attached. I must have slipped up.

BY MR. FEINBERG:

Q Mr. Singleton, prior to discussing the Esplanade tax returns with Mrs. Fisher, did you first have a conversation with Mr. Fisher at the garage?

A Yes.

Q What was that conversation?

A I didn't get your question.

Q What was the conversation that you had with Mr. Fisher concerning the Esplanade tax returns before you went to Rosalie?

A I don't know how to answer the question. You have to be specific as to what items you are referring to.

Q I can be brief.

You filled out the Esplanade tax returns, or assisted Mrs. Fisher in the preparation of those returns; is that correct?

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A Yes.

Q Is it your testimony that before you assisted Mrs. Fisher you first spoke to Mr. Fisher?

MR. NAFTALIS: I object to the leading.

THE COURT: That is leading.

Put a proper question.

THE WITNESS: That is why it is confusing to me.

Q Did you ever have a conversation with Mr. Fisher at the Esplanade garage?

A Yes. On several occasions I would contact him there when there was a specific question that had to be answered in the preparation of the documents and he said, "If I can't give it to you now see my wife. She has all the information."

Then I also asked him about employees at the garage, and at that time he says he was giving them cash, so I said, "You can't do that. You have to make an application to get an I. D. number to report the income even though you, as an officer, am taking income from the garage."

Q What did he say?

A He said, "Okay. You do it right. You know what to do.

So I said, "But I have to ask you questions before I do it."

Q What did he say?

A He said, "Okay. When you are ready, if you cannot find me because --"

I said, "If I can't find you I will contact your wife."

That is what I said.

Q What did he say?

A He said okay.

I told his wife, "You must make an application to get an I. D. number to report the wages.

Q In 1967 did youmeet with Mr. and Mrs. Fisher at the house in preparing that tax return?

A Yes.

Q Did you go over the information on that tax return with both Mr. and Mrs. Fisher?

MR. NAFTALIS: I object to leading, number one; number two, I object that this is not proper redirect examination.

THE COURT: Don't lead the witness.

MR. NAFTALIS: I don't think this is proper redirec

THE COURT: I will allow it, but don't lead.

Q Did you have a conversation with Mr. and Mrs. Fisher concerning their 1967 return?

A Yes. At the house.

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Q Both were present?

A Both were present.

MR. FEINBERG: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: We will take our mid-afternoon recess.

(Recess.)

(In open court, jury present.)

MR. FEINBERG: Your Honor, I have a series of documents to offer at this time.

The Government offers 74 for identification.

MR. NAFTALIS: No objection.

xx 7 (Government's Exhibit 74 received in evidence.)

MR. FEINBERG: The Government offers 111.

MR. NAFTALIS: No objection.

xx 10 (Government's Exhibit 111 received in evidence.)

MR. FEINBERG: The Government offers 112.

MR.NAFTALIS: Your Honor, if you don't mind, if I consult with Mr. Feinberg -- because I don't think there will be any objection as to the purpose of his offer and if we could have it on the side, it would save some time.

(Pause.)

MR. FEINBERG: The Government is offering 112 and 113 for identification into evidence.

MR. NAFTALIS: Thank you, Mr. Feinberg.

No objection.

xx 21 (Government's Exhibits 112 and 113 received in evidence.)

MR. FEINBERG: The Government offers 114 and 115.

MR. NAFTALIS: No objection to 114 and 115.

xx 25 (Government's Exhibits 114 and 115 received in evidence.)

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MR. FEINBERG: The Government offers 116 and 117.

MR. NAFTALIS: No objection to 116 and 117.

(Government's Exhibits 116 and 117 received in evidence.)

MR. FEINBERG: The Government offers 118 and 119.

MR. NAFTALIS: No objection to 118 and 119.

(Government's Exhibits 118 and 119 received in evidence.)

MR. FEINBERG: The Government offers 120 and 121.

MR. NAFTALIS: No objection to 120.

On 121, canwe just examine this a little bit further and let Mr. Feinberg some time before the end of today's session know whether we have any objection.

MR. FEINBERG: Here is Government Exhibit 122, which is also offered, which is the same record on this subject.

(Government's Exhibit 120 received in evidence.)

THE COURT: Of cours, this could have been done at the recess.

MR. FEINBERG: Your Honor, may I just explain basically -- may I explain to the jury what these documents are?

THE COURT: All right.

(Mr. Feinberg read to the jury from the various

Government exhibits recently admitted into evidence to the jury.)

THE COURT: Is that a certificate of incorporation or certificate of doing business?

MR. FEINBERG: It says Certificate of Incorporation.

xx (Government's Exhibits 121 and 122 received in evidence.)

(Mr. Feinberg read to the jury from Government's Exhibits 121 and 122 in evidence.)

THE COURT: Members of the jury, these are a lot of exhibits with figures on them. The relevance of them will be made clear to you in due time.

I take it they now have no special meaning to you, but in due course, they will be explained.

MR. FEINBERG: Your Honor, at this time the Government would call Aaron Nussman as a witness.

...

A A R O N N U S S M A N, called as a witness by the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEINBERG:

Q Mr. Nussman, I ask you to keep your voice up so that

everyone in the room can hear you. It is difficult sometimes.

Mr. Nussman, how are you employed?

A I am an attorney-at-law of the State of New Jersey.

Q How long have you been an attorney?

A Since 1937.

Q Where are your offices located?

A 214 Main Street in Hackensack.

Q Directing your attention to on or about March 17th of 1967, were you working that day?

A Yes, I was.

Q Where?

A At my office. At that time it was at 210 Main Street in Hackensack.

Q Did there come a time when you were visited by Gilbert Fisher, Jr.?

A There was.

Q Do you see Mr. Fisher in the courtroom?

A Yes, he is sitting,the third gentleman on my left at the counsel table.

MR. NAFTALIS: Conceded.

Q Did anyone accompany Mr. Fisher?

A Yes, a Mr. Gross.

Q What happened at that meeting?

A Well, Mr. Gross and Mr. Fisher came in. As I recall, there was a contract for a purchase of vacant land in, I think, in Englewood, New Jersey, North Woodland Street or North Woodland Avenue. The contract, as I recall, was between Mr. Gross and I don't recall the name of the sellers at the moment and apparently I was told that Mr. Gross was assigning that contract to Lulu Fisher.

Q Lulu Fisher?

A Lulu Fisher. At that time I drew a separate assignment for Mr. Gross to transfer his interest in that contract to Lulu Fisher. I think the consideration was $2,000, as I recall, and I also had Mr. Gross sign an assignment on the back of the original contract from himself to Lulu Fisher, as I recall it.

Q Was Lulu Fisher present during this meeting?

A My recollection is she was not.

Q So it was just you, Mr. Gross and Mr. Fisher?

A That is correct.

Q I show you Government Exhibit 76,and ask if you can identify this.

A Yes, this appears to be a duplicate original of the contract between Sidney E.Gross and Isaac Sherman and Tamara Sherman.

Q And this is the document that you received on that

day?

A That is correct. Sidney Gross signed it in my presence. This is my-- I witnessed his signature. That is my signature and on the reverse side --

Q Keep your voice up, please.

A On the reverse side I had typed in the assignment from Sidney E. Gross to Gilbert Fisher, Sr. and Lulu Fisher, his wife.

Q I show you Government Exhibit 77 and ask if you can identify that document.

A Yes. This is the separate assignment that I drew in my office and Mr. Gross signed it in my presence.

Q What is this document?

A This is a separate assignment of that contract of purchase.

MR. FEINBERG: The Government offers 76 and 77.

MR.NAFTALIS: No objection.

xx (Government's Exhibits 76 and 77 received in evidence.)

MR. FEINBERG: May I, your Honor?

(Mr. Feinberg read from Government's Exhibits 76 and 77 in evidence to the jury.)

Q Then what happened, Mr. Nussman?

A Well, I think at that time I received some money

because 10% of the contract price, which was $16,500, 10% of that, of course, had to be forwarded together with the contract after it had been signed by Sidney Gross to the attorney who represented the sellers.

Q Did you receive some money at that time?

A Yes, I did.

Q Do you recall how much you received at that time?

A I think I received the 10%.

Q Who did you receive it from?

A Mr. Gilbert Fisher.

Q Was this cash or check, do you recall?

A My recollection is it was cash.

Q I show you Government Exhibit 78 and askif you can identify that.

A Yes, I can. This is a pink slip that we use in our office for all transactions whether we receive cash or check. The secretary makes this out and notes the receipt of the money.

Apparently at this time on that date I received $1650 in cash on account of this contract. It was then deposited in my trust account on March 17, 1967, and these are the initials on the bottom, AMH, who at that time was my secretary, Ann M. Holub.

Q And 78A, can you identify that?